FILE COPY

Office Supreme Court, U. S.
AUG 7 1939
CHARLES ELMORE CROPLEY
CLERK

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1939**

---

## No. 270

---

NATHAN MAYO, AS COMMISSIONER OF AGRICULTURE OF THE STATE OF FLORIDA, ET AL.,

*Appellants,*

*vs.*

LAKELAND HIGHLANDS CANNING CO., INC., THE POLK COMPANY AND ROBERTS BROTHERS, INC., ET AL.

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

---

## STATEMENT AS TO JURISDICTION.

---

GEORGE COUPER GIBBS,
*Attorney General of Florida,*
H. E. CARTER,
*Assistant Attorney General of Florida,*
WM. C. PIERCE,
O. K. REAVES,
E. GLENN GRIMES,
*Counsel for Appellants.*

# INDEX.

## Subject Index.


| | Page |
|---|---|
| Satement as to Jurisdiction | 1 |
| Statutory provisions sustaining jurisdiction | 2 |
| Statute of the State the validity of which is involved | 2 |
| Dates of order appealed from and presentation of appeal application | 7 |
| Nature of the case and of the rulings of the District Court | 7 |
| Cases sustaining jurisdiction | 26 |
| Appending copies of opinions, etc. | 27 |
| Exhibit "A"—Opinion of April 13, 1939 of the District Court of the United States for the Southern District of Florida | 28 |
| Exhibit "B"—Decree of the District Court of the United States for the Southern District of Florida | 33 |
| Exhibit "C"—Bill of complaint | 34 |
| Exhibit "D"—Growers' Cost Guarantee Law | 53 |
| Exhibit "E"—Bond and License Act | 55 |
| Exhibit "F"—Resolution and order of the Commissioner of Agriculture | 67 |
| Exhibit "G"—Amendment to bill of complaint | 68 |


## Table of Cases Cited.


| | |
|---|---|
| *Apgar* v. *Wilkinson*, 95 Fla. 457, 116 S. 78 | 22 |
| *Bacon* v. *Illinois*, 227 U. S. 504, 57 L. Ed. 615 | 21 |
| *Barney* v. *City of New York*, 193 U. S. 430, 25 Sup. Ct. Rep. 502 | 20, 27 |
| *Barrett* v. *State of Indiana*, 229 U. S. 26, 33 Sup. Ct. Rep. 692 | 19 |
| *Borden's Farm Products Co.* v. *Baldwin*, 293 U. S. 194, 55 Sup. Ct. Rep. 187, 79 L. Ed. 281 | 12, 26 |
| *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. 251, 56 Sup. Ct. Rep. 253 | 19 |
| *Brass* v. *State of North Dakota*, 153 U. S. 391, 14 Sup. Ct. Rep. 857, 38 L. Ed. 757 | 18 |
| *Carter* v. *Carter Coal Company*, 298 U. S. 238, 56 Sup. Ct. Rep. 855 | 20 |
| *Chessnol* v. *City of Greenwood*, 291 U. S. 584, 78 L. Ed. 1004 | 21 |

Page

*Coe* v. *Errol*, 116 U. S. 517, 29 L. Ed. 715, 6 Sup. Ct. Rep. 475 21

*Concordia F. Ins. Co.* v. *People*, 292 U. S. 535, 78 L. Ed. 1411, 54 Sup. Ct. Rep. 830 20

*Connolly* v. *Union Sewer Pipe*, 184 U. S. 540, 22 Sup. Ct. Rep. 431, 46 L. Ed. 679 26

*Currin* v. *Wallace*, 59 Sup. Ct. Rep. 379 19

*Elgin National Watch Co.* v. *Illinois Watch Case Co.*, 179 U. S. 665, 21 Sup. Ct. Rep. 270 20

*Gulf, C. & S. F. R. Co.* v. *Hefley*, 158 U. S. 98, 39 L. Ed. 910 21

*Hammer* v. *Dagenhart*, 247 U. S. 251, 62 L. Ed. 1101 20, 21

*Hegenam Farms Corp.* v. *Baldwin*, 6 Fed. Supp. 297, 293 U. S. 163, 55 Sup. Ct. Rep. 7 17, 26

*Home Telephone & Telegraph Co.* v. *City of Los Angeles*, 227 U. S. 278, 33 Sup. Ct. Rep. 312 20

*Kroger Grocery & Baking Company* v. *Lutz, Attorney General*, 299 U. S. 300, 81 L. Ed. 251 26

*KVOS, Inc.*, v. *Associated Press*, 299 U. S. 269, 81 L. Ed. 183 25

*Lemke* v. *Farmers Grain Company*, 258 U. S. 50, 42 Sup. Ct. Rep. 244, 66 L. Ed. 458 26

*Leschen & Sons Rope Co.* v. *Broderick & Bascom Rope Co.*, 201 U. S. 166, 26 Sup. Ct. Rep. 425 20

*McNutt, Governor*, v. *General Motors Acceptance Corporation*, 298 U. S. 178, 80 L. Ed. 1135 25, 27

*McNutt, Governor*, v. *McHenry Chevrolet Co., Inc.*, 298 U. S. 190, 80 L. Ed. 1141 25

*Mackay Teleg. & Cable Co.* v. *City of Little Rock*, 250 U. S. 94, 63 L. Ed. 863, 39 Sup. Ct. Rep. 428 19

*Mayo* v. *Eckerson Fruit Canners, Inc.*, 188 So. 781 15

*Mayo, as Commissioner* v. *The Polk Company*, 124 Fla. 534, 169 So. 41, 299 U. S. 507, 57 Sup. Ct. Rep. 39 16

*Miami Laundry Company* v. *Florida Dry Cleaning & Laundry & Laundry Board*, 183, So. 759 18

*Milk Control Board of Pennsylvania* v. *Eisenberg Farm Products*, 59 Sup. Ct. Rep. 528 18, 27

*Munn* v. *Illinois*, 94 U. S. 113, 24 L. Ed. 77 17

*Nebbia* v. *People*, 291 U. S. 502, 54 Sup. Ct. Rep. 505 17, 27

*N. Y. & N. H.* v. *N. Y.*, 165 U. S. 628, 41 L. Ed. 853, 17 Sup. Ct. Rep. 418 21

Page

*Polk Company* v. *Glover*, 59 Sup. Ct. Rep. 15 ..... 12, 26
*Robbins* v. *Taxing Dist. of Shelby County*, 120 U. S. 489, 30 L. Ed. 694, 7 Sup. Ct. Rep. 592 ..... 20
*Savage* v. *Jones*, 225 U. S. 501, 32 Sup. Ct. Rep. 715, 56 L. Ed. 1182 ..... 26
*Schechter Poultry Corporation* v. *United States*, 295 U. S. 495, 55 Sup. Ct. Rep. 837 ..... 20
*Sligh* v. *Kirkwood*, 237 U. S. 52, 35 Sup. Ct. Rep. 501 ..... 17, 27
*Smith* v. *Alabama*, 124 U. S. 465, 31 L. Ed. 508, 8 Sup. Ct. Rep. 564 ..... 20
*Sunday Lake Iron Co.* v. *Wakefield Twp.*, 247 U. S. 350, 62 L. Ed. 1154, 38 Sup. Ct. Rep. 495 ..... 18, 20
*Therrell* v. *Smith*, 124 Fla. 197, 169 So. 388 ..... 22
*Townsend* v. *Yeomans*, 301 U. S. 441, 57 Sup. Ct. Rep. 842 ..... 18, 27
*United States* v. *Rock Royal Co-Op., Inc.*, 59 Sup. Ct. Rep. 993 ..... 20
*West Coast Hotel Company* v. *Parrish*, 300 U. S. 379, 57 Sup. Ct. Rep. 578 ..... 17, 26
*Western Union Telegraph Company* v. *Crovo*, 220 U. S. 374, 55 L. Ed. 502, 31 Sup. Ct. Rep. 376 ..... 21

STATUTES CITED.

Act of March 4, 1913 (c. 160, 37 Stat. 1013), as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 938); Judicial Code, Section 266; Title 28, Section 380, U. S. Code ..... 2, 8
Act of June 19, 1934, Ch. 651 ..... 2
American Jurisprudence, Volume 12, "Constitutional Law", Sec. 566 ..... 19
Constitution of the United States, 14th Amendment ..... 9
Laws of Florida, Acts of 1935, Chapter 16, 862 (pages 268 to 270 in Volume i, of the Laws of Florida, regular session 1935) ..... 2
Laws of Florida, Acts of 1935, Chapter 16, 860 ..... 16
Laws of Florida, Acts of 1937, Chapter 17, 777 ..... 15
Resolution and order of the Florida Citrus Commission of January 16, 1939 ..... 7, 15
Rules of Civil Procedure, Rule 72 ..... 2

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1939

## No. 270

NATHAN MAYO, AS COMMISSIONER OF AGRICULTURE OF THE STATE OF FLORIDA, ET AL.,

*Appellants,*

*vs.*

LAKELAND HIGHLANDS CANNING CO., INC., THE POLK COMPANY AND ROBERTS BROTHERS, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

## STATEMENT AS TO JURISDICTION.

In compliance with Rule 12 of the Supreme Court of the United States, as amended, Nathan Mayo, as Commissioner of Agriculture of the State of Florida, and Florida Citrus Commission, a body corporate, defendants herein, herewith submit their statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon the appeal in

this cause, together with a showing of the matters in which it is claimed that the District Court has abused its discretion in granting the interlocutory injunction.

**A—Statutory Provisions Sustaining Jurisdiction.**

The statutory provision sustaining the jurisdiction of the Supreme Court to review the judgment or order appealed from is conferred by the Act of March 4, 1913 (c. 160, 37 Stat. 1013) as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 938); Judicial Code, Section 266; Title 28, Section 380, U. S. Code. Such statutory provision allows an appeal to be taken directly to the Supreme Court of the United States from an order granting an interlocutory injunction in a case involving the constitutionality of a State statute before a District Court of three judges. See also Rule 72 of the rules of civil procedure for the District Courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934, Ch. 651.

**B—Statute of the State, the Validity of Which is Involved.**

The statute of the State of Florida involved in this case, and which was declared unconstitutional and invalid by the three-judge District Court upon hearing of plaintiffs' motion for interlocutory injunction, but which defendants herein contend is valid and constitutional, is Chapter 16,862, Laws of Florida, Acts of 1935, shown on pages 268 to 270 in volume 1, of the Laws of Florida, regular session 1935. The Act is as follows:

> An Act Relating to Citrus Fruit: Prescribing Conditions and Limitations Upon the Sale, Marketing and Processing Thereof, and the Effect of Contracts of Sale and of Marketing and Processing Agreements.

WHEREAS, it is found by the Legislature and hereby declared that the production and distribution of citrus fruit is a paramount industry in Florida upon which the prosperity of the State in a large measure depends; that such fruit and the juices thereof have become and are generally used in great and rapidly increasing quantities, both voluntarily and upon advice of physicians, by people of all classes, ages and conditions; that it is necessary for the reasonable comfort, welfare and health of the people and in order to build up their strength and vigor that an adequate and dependable supply of high grade citrus fruit be constantly available, and the production, transportation, processing, distribution and sale of citrus fruit in the State of Florida is therefore hereby declared to be a business affecting the public health and interest, that unfair, unjust, destructive, demoralizing, and uneconomic trade practices have been and are continuing to be carried on in the sale and distribution of citrus fruit in this State to the extent that such fruit has been and is continuing to sell in many cases at prices below the cost of production and the constant, dependable and adequate supply of such fruit for sale and consumption is thereby so seriously imperiled as to threaten the break down of the industry; that the present acute economic condition in Florida is in part the consequence of a severe and increasing disparity between the prices of citrus fruit and other commodities; that it is both expedient and necessary to build up the quality and reputation of Florida's citrus fruit in the market and to stabilize the Florida citrus industry and to protect the public and the growers against fraud, deception and financial loss through further continuation of unscrupulous practices and haphazard methods in connection with the marketing of citrus fruits, and to that end, to assure the grower returns at least equal to the cost of production of high grade citrus fruit.

THEREFORE, in the exercise of the police power of the State, for the purpose of protecting and promoting the public health and general welfare,

Be It Enacted by the Legislature of the State of Florida:

SECTION 1. This Act shall be known and called the Growers Cost Guarantee Act.

SECTION 2. The term "Citrus Fruit" as used herein means and includes only the fruits Citrus Grandis, Osbeck, commonly called grapefruit, and Citrus Sinensis, Osbeck, commonly called oranges, and Citrus Nobilis Deliciosa, commonly called tangerines, grown in the State of Florida.

The term "standard packed box" means 1-3/5 bushels whether in bulk or in a container.

SECTION 3. The Commissioner of Agriculture in his discretion and by and with the consent and advice of the Governor shall have the power to declare the existence of a State Emergency in the Citrus Industry, and upon petition or petitions signed by persons, firms, corporations, or associations, owning or controlling 50% or more of the producing acreage of citrus fruit, requesting such action, being filed with the Citrus Commission, such percentage to be based upon the survey heretofore made by the Federal Emergency Relief Administration and supplemented by such further surveys as the Citrus Commission from time to time may make, and after the Citrus Commission shall have procured from the producers, shippers, or handlers of citrus fruit, not subject to the provisions of this Act, binding agreements to conform thereto and abide by its terms, the Florida Citrus Commission shall determine and record in permanent form annually the average reasonable cost per standard packed box of producing citrus fruit and every contract, agreement, plan or arrangement with the grower by or under which his citrus fruit shall be bought, marketed, or processed shall be held to require that the person, firm, corporation, or association buying, marketing or processing said citrus fruit shall in any event pay the grower said cost of production, to be ascertained by multiplying the said cost per standard

packed box as shown by the record of the Commission current at the time the contract, agreement, plan of arrangement with the grower shall be made, by the number of packed boxes so bought, marketed and processed during the season or under the particular contract, agreement, plan or arrangement if for less than a marketing season. Any contract, plan, scheme or device whereby it shall be attempted to preclude the grower from recovering such cost of production shall to that extent be held to be unlawful and against the public policy of this State, but in all other respects and particulars contracts of sale, marketing and processing shall be valid and binding and the terms thereof shall measure the rights of the respective parties.

SECTION 4. The provisions of this Act shall apply to any one or more of the citrus varieties embraced hereunder as may be determined by the petitions and agreements provided for in the foregoing section.

SECTION 5. This Act shall become effective immediately upon becoming a law.

Approved June 8, 1935.
Filed in Office Secretary of State June 8, 1935.

The resolution or order adopted by the Florida Citrus Commission on January 16, 1939, pursuant to the above State law, to become effective January 20, 1939, the validity of which is involved herein along with said State law, is as follows:

Resolution and Order.

WHEREAS, Honorable Nathan Mayo, Commissioner of Agriculture of the State of Florida, by and with the consent and advice of Honorable Fred P. Cone, Governor of the State of Florida, has by proclamation dated the 13th day of January, A. D. 1939, declared the existence of a State emergency in the Citrus industry, under authority of Chapter 16862, Laws of Florida,

Acts of 1935, known as the Grower's Cost Guarantee Law; and

WHEREAS, petitions signed by persons, firms, corporations and associations, which this Commission finds own or control 50% or more of the producing acreage of citrus fruit and 50% or more of the producing acreage of grapefruit in the State of Florida, have been presented requesting the Florida Citrus Commission to determine and record in permanent form the average reasonable cost per standard packed box of producing grapefruit; and

WHEREAS, the Florida Citrus Commission has determined that all citrus fruit dealers handling grapefruit now being grown in the State of Florida are subject to the provisions of said act; and,

WHEREAS, the Florida Citrus Commission, based upon said proclamation of the Commissioner of Agriculture and the Governor of Florida, and upon said petitions, having proceeded as authorized and required by said Chapter 16862, Laws of Florida, Acts of 1935, hereby determines and records in permanent form the average reasonable cost per standard packed box of producing grapefruit to be thirty-two (32¢) cents for the citrus fruit season 1938-39;

NOW, THEREFORE, the Florida Citrus Commission does hereby find, determine and order that the average reasonable cost per standard packed box of producing grapefruit is thirty-two (32¢) cents and that said price be recorded in permanent form for the season 1938-39 and that every contract, agreement, plan or arrangement with the grower by or under which his grapefruit shall be bought, marketed or processed shall be held to require that the person, firm, corporation or association buying, marketing or processing said grapefruit shall in any event pay the grower said cost of production as herein ordered and as provided in Chapter 16862, Laws of Florida, Acts of 1935.

The foregoing resolution and order are unanimously adopted and promulgated by the Florida Citrus Com-

mission in open meeting duly assembled in Lakeland, Florida, on this the 16th day of January, A. D., 1939, and shall become effective at 12:01 a. m. Friday, January 20th, A. D., 1939.

FLORIDA CITRUS COMMISSION.
By JOHN MAXCY,
*Chairman.*

Attest: Chas. F. Chastain, Secretary. (Seal.)

---

**C—Dates of Order Appealed From and Presentation of Appeal Application.**

The date of the judgment or order sought to be reviewed, is April 28, 1939. The application for appeal is presented on the 3rd day of July, 1939.

**D—Nature of the Case and of the Rulings of the District Court.**

On March 23, 1939, complaint was filed in the United States District Court for the Southern District of Florida, by plaintiffs herein (appellees in the Supreme Court) against Nathan Mayo, as Commissioner of Agriculture of the State of Florida, defendant herein (appellant in the Supreme Court), praying that Chapter 16,862, Laws of Florida, Acts of 1935, and the resolution or order of the Florida Citrus Commission of January 16, 1939, promulgated thereunder, be declared invalid and unconstitutional and that said Commissioner of Agriculture be enjoined and restrained from enforcing or attempting to enforce the provisions of said State law. Temporary restraining order was prayed, as was also interlocutory injunction upon convening of a statutory three-Judge Court, and it was also prayed that permanent injunction issue upon final hearing. On March 28, 1939, by order of the District Judge, the Florida Citrus Commission, a corporate body created by and under

the laws of Florida, was permitted to intervene as party defendant upon petition filed by said Commission for that purpose.

On *ex parte* application of plaintiffs, temporary restraining order was entered on March 23, 1939, by the District Judge. A statutory District Court of three Judges, under Title 28, Section 380, U. S. Code, was convened at Orlando, Florida, on April 10, 1939, to hear and consider the application of plaintiffs for an interlocutory injunction. The Court consisted of Honorable Leon McCord, Judge of the United States Circuit Court of Appeals for the Fifth Circuit, Honorable Robert T. Ervin, United States District Judge, and Honorable Alexander Akerman, United States District Judge, the latter being the resident Judge of the district wherein the suit was filed. During the course of the three-Judge hearing, plaintiffs asked and were granted leave to amend their complaint theretofore filed, by adding thereto a paragraph setting forth as a further ground of alleged unconstitutionality of the State law involved, the contention that said law impairs the obligation of contract and the right to freedom of contract.

At the time of the three-Judge hearing, no pleadings had been filed on behalf of the defendant Commissioner of Agriculture or the Florida Citrus Commission, intervening defendant. At the hearing the Court permitted plaintiffs to introduce certain oral sworn testimony and also allowed introduction of certain documentary evidence, including affidavits, presented by counsel for the respective parties.

On April 28, 1939, order was entered signed by all three Judges, granting the motion for interlocutory injunction. The order stated that said interlocutory injunction was granted "for the reasons to be expressed in an opinion to be filed later". Thereafter, on May 3, 1939, opinion likewise signed by all three Judges was filed in the cause holding the State law involved and the resolution of the Florida

Citrus Commission promulgated thereunder unconstitutional and invalid. This opinion, although not filed until May 3, 1939, was dated April 13, 1939, three days after the three-Judge Court hearing.

No findings of fact or conclusions of law were entered or filed, except such as were contained in the opinion filed May 3, 1939. The Court held the State law to violate the due process clause of the Fourteenth Amendment, to be discriminatory as against plaintiffs and thereby to violate the equal protection clause of the Constitution, and to be arbitrary and "prejudicial" as against the growers and producers of such citrus fruits in violation of the Constitution. The opinion further held that there was "no proof in the record" that the Florida Citrus Commission had complied with certain statutory prerequisites before adopting and putting into effect the order promulgated pursuant to the State law involved.

Without making specific findings of fact, the opinion called attention to certain facts "which the testimony showed". Among these were that the current year's crop was large in Florida, that the Florida Citrus Commission had fixed the cost of production under the State law at 32¢ per standard packed box, that plaintiffs, as canners of such citrus products, could not pay such price and the cost of processing and sell the processed product without suffering a loss, that such canners had established businesses of long standing with a large investment and employing several thousand persons, that they had been forced to cancel previously made contracts for the sale of citrus juice for future delivery because of the cost price fixed by the Commission, and that because thereof "the canners were penalized for the benefit of the growers if the canners continued business" Other facts which the opinion says the "testimony showed", were that many citrus growers had organized cooperative corporations to process their grapefruit, which

cooperatives did not pay cash for their fruit to these growers, "but credited them with the amount of the price of the fruit and were not expected to pay for it unless the market prices enabled them to pay it, and the Commissioner did not enforce payment while requiring payment of the regular canners." This was held to be a discrimination against the canners (presumably the plaintiff canners), and it was said that "the Commissioner must have construed the Act so as to authorize him to do this". A hypothetical case was argued in the opinion, not supported by any testimony, urging that a citrus grower who had spent $10,000 in raising his crop might be able to sell his crop for $8,000 and thereby "minimize his loss", but under the State law and the resolution of the Commission such grower could not move his fruit and "would be compelled to let it spoil on the trees and so lose the whole crop." The opinion poses the question whether these supposed facts were not "alone sufficient to make the Act arbitrary and prejudicial" and concludes that the Act was unconstitutional. No growers were parties to the suit, but all plaintiffs were independent canners of citrus products. The opinion closed with the observation that there was "no proof in the record" that the Florida Citrus Commission had procured from certain handlers of citrus fruits, not subject to the law, binding agreements to conform thereto, which under the law it was the duty of the Commission to procure before fixing the cost of production. This apparently imposed upon the State enforcement officers the burden of sustaining the constitutionality of the law and of the resolution, rather than upon those challenging the State law to establish invalidity.

From the foregoing recitals it clearly appears that the nature of the case and of the rulings of the three-Judge District Court was such as to bring the case within the jurisdictional provisions relied on, and that the questions involved are substantial and that the Court abused its dis-

cretion in granting the interlocutory injunction and peremptorily striking down as unconstitutional the State law challenged and the resolution of the Commission thereunder.

The action of the District Court in proceeding to pass judgment on the constitutional questions at the interlocutory hearing was unique and somewhat spectacular. The opinion states that "The defendants appeared and though they had not filed answers, argued the case and requested the Court to pass on all questions presented, and especially on the constitutionality of the Act involved." Counsel for defendants are not in position, even if so inclined, to argue with the District Court as to the scope of the hearing. But it is submitted that even though such request was made, the request would extend only to a bare examination of the statute as to its constitutionality *vel non*. It could hardly be said to embrace a consideration or final determination of the factual situation. Indeed the Court must have so understood, because at the time the opinion was written, all of the evidence and affidavits, brief in character as it necessarily was, was not before the Court nor had even been presented or known to, or considered by, the Court. At the three-Judge interlocutory hearing on April 10th the Court at the request of plaintiffs' counsel granted plaintiffs until and including April 15th within which to file and present certain supplementary affidavits and granted five days thereafter within which defendants could present countervailing affidavits if desired. Plaintiffs availed themselves of such privilege and on April 15th filed certain supplemental affidavits. But before such time, and on to wit, April 13th, the opinion was written, as appears from the date on the face thereof, although such opinion was not filed in the District Clerk's office until May 3rd. The order granting interlocutory injunction was dated and filed in the District Clerk's office on April 28th and indicated therein the filing of an opinion by the Court.

No specific findings of fact were made by the Court nor separate conclusions of law, except such as were contained, either expressly or by implication, in the opinion of the Court. The opinion mentions numerous facts which it is stated "the testimony showed", and it affirmatively and conclusively appears that the District Court was guided by such "shown" facts in its determination that the State law was unconstitutional. In fact, it appears from the opinion that the Court was largely influenced by such evidentiary considerations. This action by the Court did flagrant violence to the rule laid down in *Polk Company* v. *Glover, etc.*, — U. S. —, 59 S. Ct. 15, text 17, — L. Ed. —, decided by the Supreme Court upon appeal from this same District Court, wherein the Supreme Court stated:

> "The salutary principle that the essential facts should be determined before passing upon grave constitutional questions is applicable. See *Borden's Farm Products Co.* vs. *Baldwin*, 293 U. S. 194, 211-213, 55 S. Ct. 187, 192, 193, 79 L. Ed. 281, and cases cited. And that determination requires a hearing in due course upon the issues raised by the pleadings."

In the *Polk* case, *supra*, a law of the State of Florida affecting the canning of citrus fruit was attacked in the District Court and at the time of the interlocutory three-Judge hearing, the State enforcement officers, who were made defendants in the suit, had filed answers as well as motions to dismiss the bill. Voluminous evidence in the form of affidavits and exhibits was adduced by both sides at the hearing. The District Court denied the motion for interlocutory injunction, granted the motion to dismiss the bill, and made separate findings of fact and conclusions of law. Upon appeal to the Supreme Court, plaintiffs therein (who were canners of Florida citrus fruits and who were generally the same canners as are plaintiffs in the instant suit), complained that the District Court should not have made

findings of fact without full hearing in due course upon the pleadings and that the District three-Judge court should not have considered such facts in passing upon the merits of the case at that time. The Supreme Court upon appeal, after observing that "the findings of the court indicate that that evidence, in part at least, underlay the final decree it entered", and that "for the purpose of that motion (to dismiss), the Court was confined to the bill and was not at liberty to consider the affidavits or the other evidence produced upon the application for an interlocutory injunction", held that plaintiffs in that case were entitled "to an opportunity to prove their case, if they could, and that the court should not have undertaken to dispose of the constitutional issues * * * in advance of that opportunity". — U. S. text —, 59 S. Ct. text 17.

The rule announced in the *Polk* case, which merely reaffirmed the rule in the *Borden's Farm Products* case, is of equal force where the facts presented at the interlocutory hearing are used as the basis for holding a State statute unconstitutional as where the facts are used as the basis for holding the State law constitutional.

In the instant case neither the State Commissioner of Agriculture, sole defendant named in the complaint, nor the Florida Citrus Commission, intervening defendant, who were the only defendants before the Court, had filed any answer or other pleadings whatever to the complaint. The complaint comprised 26 typewritten pages, exclusive of exhibits attached thereto. This complaint was replete with allegations setting up a factual situation which plaintiffs contended made the State law and resolution of the Florida Citrus Commission unconstitutional as to plaintiffs. It is true that the opinion in the instant case does not show clearly that the Court meant to finally determine the facts or make any specific findings of fact. What the Court stated in its opinion was only that "the testimony showed"

certain things to exist. Even if it be admitted that plaintiffs' testimony showed these facts to exist (which defendants do not concede), the testimony of defendants, with at least equal force, showed such facts not to exist. The opinion could have with equal celerity and accuracy have stated that "the testimony showed" exactly the opposite of the facts stated in the opinion. It is only by construing the word "showed" as used in the opinion to be equivalent of "established" that the implication can be drawn that the Court intended to find the facts referred to in the opinion.

But whether the Court made findings of fact in its opinion, or merely referred to certain phases of the evidence in passing, the conclusion is affirmative and irresistible that the facts so stated by the Court in its opinion were used as the basis, at least in part, for the adjudication of unconstitutionality made by the Court. This is directly in line with what the Supreme Court in the *Polk* case said could not be done.

Proceeding to the merits of the constitutional questions, defendants submit that such questions are substantial and such as to bring the case upon appeal within the jurisdictional provisions, irrespective of whether the District Court considered the facts in holding the act involved unconstitutional. The consideration of such facts by the Court in arriving at its determination merely makes more substantial the questions presented.

The State law involved in the case, known as the Grower's Cost Guarantee Law, empowers the State Commissioner of Agriculture by and with the advice and consent of the Governor of Florida, to declare the existence of a state of emergency in the citrus industry. Upon such declaration the Florida Citrus Commission determines and fixes the average reasonable cost of production of a standard packed box of producing citrus fruit. The Act then requires every

contract or arrangement with the grower under which his citrus fruit is purchased, marketed or processed, to guarantee the grower in any event such ascertained cost of production and makes unlawful any contract or device whatever whereby the grower is attempted to be precluded from recovering such production cost. The Act provides that in all other respects such contracts of sale, marketing and processing shall be valid. Boiled down, the Act provides that whenever the citrus industry is faced with an emergency, so found to exist by the Commissioner of Agriculture and the Governor, the Florida Citrus Commission shall ascertain how much it cost the grower that season to produce a standard packed box of citrus fruit and, after so fixing and recording such cost of production, the canner or similar dealer in citrus fruit must assure and guarantee to the grower at least his said cost of producing the fruit. The law merely purports to guarantee the average reasonable cost of production and nothing more. No margin of profit is contemplated by the Act.

Pursuant to this law, the State Commissioner of Agriculture on January 13, 1939, by and with the consent and advice of the Governor, declared the existence of such a state of emergency in the citrus industry, whereupon the Citrus Commission fixed the cost of production of grapefruit in Florida for the season 1938-1939 to be 32¢ per standard packed box. The Commission's resolution was adopted and promulgated on January 16, 1939, and became effective on January 20, 1939. The complaint was not filed in this cause until March 23, 1939, and until after the Supreme Court of Florida had held invalid a certain contract attempted to be set up by one of the plaintiffs herein as a means of avoiding the law. See *Mayo* v. *Eckerson Fruit Canners, Inc.*, -- Fla. —, 188 So. 781. Chapter 17,777, Laws of Florida, Acts of 1937, commonly known as the Bond and License law (copy whereof is appended hereto

as Exhibit "B" to the complaint), requires all citrus fruit dealers, including canners, to secure licenses to do business as such in Florida. Section 8 of said Act makes it the duty of the State Commissioner of Agriculture to revoke or suspend the license of any dealer who violates the provisions of that Act or "the provisions of any other law of the State of Florida governing and applicable to citrus fruit dealers." The Bond and License law of 1935 (Chapter 16,860, Laws of Florida, Acts of 1935), of which the 1937 law was a reenactment with certain minor amendments, was held constitutional by the Florida Supreme Court in *Mayo, as Commissioner* v. *The Polk Company*, 124 Fla. 534, 169 So. 41, appeal from which decision by the canners attacking the law was dismissed by the United States Supreme Court for want of a substantial Federal question. 299 U. S. 507, 57 S. Ct. 39, 81 L. Ed. —. Complaint in the instant case was filed to enjoin the Commissioner from proceeding against plaintiffs under the Bond and License law for violation of the Growers' Cost Guarantee Law.

Plaintiffs contended they had the constitutional right to buy grapefruit as cheaply as they could, that many growers were willing to sell at less than the fixed cost price, that plaintiffs could not pay the cost price for grapefruit and successfully compete in the canning field with similar canneries in other States and territories, that because of such foreign competition plaintiffs stood to lose certain established outlets for their products if compelled to pay the grower his cost of production, that shipment of the product in interstate commerce would be burdened, that the Act was too vague to be enforceable, that the cost price was arbitrarily fixed by the Commission, that plaintiffs would be unable to carry out existing contracts for the purchase of the processed product if compelled to pay the grower his cost of production, and that plaintiffs were being discriminated

against because certain cooperative canning organizations were not being required to pay their member growers the cost of production. Plaintiffs contended that the law and the Commission's resolution were each arbitrary, unreasonable, confiscatory and discriminatory, and that the Act denied to the plaintiffs due process of law and the equal protection of the law, and that the Act in operation was a burden on interstate commerce, all in violation of the Federal Constitution. By amendment made at the time of the three-judge hearing, plaintiffs further contended the obligation of contract and their right to freedom of contract had been impaired. These questions, whether substantial before or not, certainly became so when the Court upon application for interlocutory order struck down the State law upon practically all the contentions advanced.

The Supreme Court has taken judicial notice that the citrus industry of Florida is one of its major industries. *Sligh* v. *Kirkwood*, 237 U. S. 52, 35 S. Ct. 501. It would seem to follow that it was a business affected with a public interest such as sustained the validity of an Illinois statute regulating prices to be charged by grain elevators. *Munn* v. *Illinois*, 94 U. S. 113, 24 L. Ed. 77. In *Nebbia* v. *People*, 291 U. S. 502, 54 S. Ct. 505, the Supreme Court upheld a New York statute authorizing the fixing of the price of milk. It was held that the due process clause of the Federal Constitution did not forbid a State regulation enacted in pursuance of the duty of the State to provide for its general welfare and reasonably calculated to accomplish that end, even though it goes to the extent of regulating prices. The Supreme Court also in *West Coast Hotel Company* v. *Parrish*, 300 U. S. 379, 57 S. Ct. 578, upheld a statute of the State of Washington prescribing and fixing a minimum wage for women. In *Hegeman Farms Corp.* v. *Baldwin*, 6 Fed. Supp. 297, affirmed in 293 U. S. 163, 55 S. Ct. 7, the right of a State Control Board to require additional payments to those from

whom milk had been bought below the fixed price, was upheld, thus carrying forward to its ultimate extent the ruling made in the *Nebbia* case. In *Milk Control Board of Pennsylvania* v. *Eisenberg Farm Products*, — U. S. —, 59 S. Ct. 528, a State law of Pennsylvania which empowered a milk control board to fix the minimum prices to be paid by milk dealers to producers and others for milk, was upheld. The right of a State Board, acting under State regulation, to fix minimum prices for laundry and dry cleaning, was upheld by the Florida Supreme Court in *Miami Laundry Company* v. *Florida Dry Cleaning & Laundry & Laundry Board*, — Fla. —, 183 So. 759. A State law under which maximum charges for storage were fixed, was upheld by the Supreme Court in *Brass* v. *State of North Dakota*, 153 U. S. 391, 14 Sup. Ct. 857, 38 L. Ed. 757. A State statute of Georgia fixing maximum charges for handling and selling leaf tobacco was upheld by the Supreme Court, in *Townsend* v. *Yeomans*, 301 U. S. 441, 57 S. Ct. Rep. 842.

The theory underlying the foregoing decisions is that when an industry or a business is affected with a public interest, such business is subject to control by the law-making power for the public good. The Supreme Court in the *West Coast Hotel* case held that the legislature is primarily the judge of the necessity of such an enactment. It was also held in the same case that freedom of contract was qualified and was not an absolute right, nor immune from reasonable regulations and prohibitions imposed in the interests of the community. The right of a State to intrust to a State board or authority the power to fix and prescribe minimum prices to be charged or paid in an industry affected with a public interest, where there is adequate reason therefor, which reason is found to exist by the legislature of the State, can hardly now be doubted. This is exactly what the Act involved in the instant case purported to do, except that it

stops with the actual cost of the production of the article and does not purport to extend to any margin of profit whatever.

The Equal Protection Clause of the Federal Constitution merely requires State laws of like application to apply to all persons similarly situated. See *Barrett* v. *State of Indiana*, 229 U. S. 26, 33 S. Ct. 692; *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. 251, 56 S. Ct. 253. And in *Currin* v. *Wallace*, — U. S. —, 59 S. Ct. 379, text 386, the Supreme Court upheld as not discriminatory a Federal Act subjecting plaintiffs therein, as tobacco warehouse men, to certain inspection and certification with respect to sales conducted in their warehouses, even though other warehouse men were doing the same sort of business in the same State and competing for patronage among the same growers as the plaintiffs without being subject to the Act. Plaintiffs in the instant case make no contention that all independent canners are not treated alike, and hence, under the foregoing decisions, they cannot complain that the Act is discriminatory or that they are deprived of equal protection. The complaint averred that the Commissioner was construing the Act not to apply to the cooperatives, and the opinion of the Court seemed to sustain the averment. But even if so, the case would fall under the rule that "Mere errors of judgment by officials will not support a claim of discrimination. Moreover, it is not enough to show that a law or ordinance has not been enforced against other persons as it is sought to be forced against the person claiming discrimination. To establish arbitrary discrimination inimical to constitutional equality, there must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity," and the presumption is always in favor of honest purpose in the administration. *12 American Jurisprudence "Constitutional Law"* Sec. 566; *Mackay Teleg. & Cable Co.* v. *City of Little Rock*, 250 U. S. 94, 63 L. Ed. 863, 39 S. Ct. 428; *Sunday Lake Iron Co.* v.

*Wakefield Twp.*, 247 U. S. 350, 62 L. Ed. 1154, 38 S. Ct. 495; *Concordia F. Ins. Co.* v. *People*, 292 U. S. 535, 78 L. Ed. 1411, 54 S. Ct. 830. And in other cases, the United States Supreme Court has held that if the State enforcement officer goes beyond the terms of the statute, he acts as a private citizen and not a State officer, and in such event the State courts, not the Federal courts, should be looked to for redress. *Barney* v. *City of New York*, 193 U. S. 430, 25 S. Ct. 502; *Elgin National Watch Co.* v. *Illinois Watch Case Co.*, 179 U. S. 665, 21 S. Ct. 270; *Leschen & Sons Rope Co.* v. *Broderick & Bascom Rope Co.*, 201 U. S. 166, 26 S. Ct. 425; *Home Telephone & Telegraph Co.* v. *City of Los Angeles*, 227 U. S. 278, 33 S. Ct. 312. Lastly, even if the Act upon its face specifically exempted cooperatives from its terms, and made the same applicable to independent canners only, such distinction would be permissible. The Supreme Court has just upheld the identical distinction. *United States* v. *Rock Royal Co-Op., Inc.*, — U. S. —, 59 S. Ct. 993, 10th headnote, text 1007-1009 and cases there cited.

It cannot be seriously contended the Act here involved violates the Commerce Clause of the Federal Constitution. A State regulation enacted in furtherance of the police power which only incidentally and indirectly affects Interstate Commerce is not forbidden. *Sligh* v. *Kirkwood, supra, Brass* v. *State of North Dakota, supra.* The distinction between "direct" and "indirect" has been clearly defined. *Schechter Poultry Corporation* v. *United States*, 295 U. S. 495, 546, 55 S. Ct. 837; *Carter* v. *Carter Coal Company*, 298 U. S. 238, 56 S. Ct. 855; *Robbins* v. *Taxing Dist. of Shelby County*, 120 U. S. 489, 30 L. Ed. 694, 7 S. Ct. 592; *Smith* v. *Alabama*, 124 U. S. 465, 31 L. Ed. 508, 8 S. Ct. 564. The production of an article intended for interstate commerce is a matter of local regulation, and interstate commerce therein does not begin until actual commencement of its transfer to another State. *Hammer* v. *Dagenhart*, 247 U. S. 251, 62

L. Ed. 1101; *Coe* v. *Errol*, 116 U. S. 517, 29 L. Ed. 715, 6 S. Ct. 475; *Bacon* v. *Illinois*, 227 U. S. 504, 57 L. Ed. 615). The interstate commerce clause of the Federal Constitution does not restrict the exercise of the State's police power. *N. Y. & N. H.* v. *N. Y.*, 165 U. S. 628, 41 L. Ed. 853, 17 S. Ct. 418. Until such time as a commodity actually commences its journey from one State to another, the State in which the commodity is located has full jurisdiction to regulate its manufacture and production. *Chessnol* v. *City of Greenwood*, 291 U. S. 584, 78 L. Ed. 1004. And lastly, even though the subject matter of the Act is within the jurisdiction of Congress under the interstate commerce clause, yet if Congress has not legislated specifically on the subject the State may do so. *Western Union Telegraph Company* v. *Crovo*, 220 U. S. 374, 55 L. Ed. 502, 31 S. Ct. 376; *Gulf C. & S. F. R. Co.* v. *Hefley*, 158 U. S. 98, 39 L. Ed. 910. And in the recent case of *Milk Control Board of Pennsylvania* v. *Eisenberg Farm Products, supra*, it was held that States remain free to act within their respective jurisdictions until Congress sees fit to act in the exercise of its overriding authority, in cases where under the interstate commerce clause it would have jurisdiction to act if it chose to do so. There is no contention in the instant case that Congress has presumed to enter the field of fixing and guaranteeing the cost of production of citrus fruit.

Plaintiffs complain that the Florida Citrus Commission determined and recorded the cost of production of grapefruit before procuring from producers, shippers or handlers of citrus fruit, not subject to the provisions of the Act, binding agreements to conform thereto and abide by its terms. It was contended that the procuring of such agreements was, under Section 3 of the Act, a condition precedent to the fixing of cost of production. In the first place, such provision is not mandatory but merely directory. The local law would prevail in the construction of said provision, and the

Supreme Court of Florida in *Apgar* v. *Wilkinson*, 95 Fla. 457, 116 S. 78, has held that similar wording in a statute merely constitutes an authorization or clothing of State officers with power and authority to do the things enumerated rather than to impose mandatory duties. It was held that "Where mandatory words or provisions are written in statutes defining the duties of administrative officers, such words or provisions may be construed as directory only, unless something in the body of the act is indicative of the contrary view". In the second place, it seems frankly apparent that such language in the instant Act is meaningless. Certainly all producers, shippers, or handlers of citrus fruit in Florida are subject to the Act. And if they are so subject to the Act they are bound by the provisions thereof by the terms of the Act itself and no necessity arises for procuring any binding agreements from any of them or to indulge in any attempted supertechnical analysis of the Act to determine which of such handlers should be bound automatically by the Act and which should give binding agreements to conform thereto. The Florida Citrus Commission found as a fact in its Resolution of January 16, 1939, that "all citrus fruit dealers handling grapefruit now being grown in the State of Florida are subject to the provisions of said Act". There was no proof by plaintiffs to the contrary. Again resorting to the local rule of construction, the Supreme Court of Florida in *Therrell* v. *Smith*, 124 Fla. 197, 169 So. 388, held that where a proviso can be given no sensible effect, or is so worded that it cannot be with certainty said to mean any particular thing, it shall and will be entirely disregarded. In the third place, the matter is not one for Federal jurisdiction. If the Florida Citrus Commission has proceeded contrary to the face of the Act, it is a matter for the State Courts and not the Federal Courts. See *Barney* v. *City of New York, supra, Home Telephone & Telegraph Company* v. *City of Los Angeles, supra.* No ground of

Federal jurisdiction can be predicated upon such alleged wrongful action of the State Commission. The District Court in its opinion held that there was "no proof in the record" that the Commission had secured such consent and agreement from producers and others not subject to the provisions of the Act, and that because of such lack of proof, the State Commissioner should be enjoined from enforcing "the fixed price". It was held that while this feature of the Act might not render it violative of the Constitution it would "certainly" require injunction. The District Court thus applied a wholly untenable rule in placing the burden upon the proponents of the State law to show their right of enforcement, rather than upon those challenging the State law to show why enforcement should be restrained. Merely to say there was no proof in the record that the Commission had acted in pursuance of the law was not to deny that the Commission had acted lawfully.

The District Court in its opinion urged a hypothetical case involving the citrus grower and apparently held the Act unconstitutional because arbitrary and prejudicial to the grower. The Court posed the factual situation of a grower who had raised a crop of citrus fruit at a cost of $10,000 and then because of the operation of the Act could not sell it for even $8,000 and thus stood to lose his entire crop. But even if true, no growers are before the Court complaining. Only independent canners of citrus products are asking that the Act be stricken down. The Act is for the protection, rather than the detriment, of the grower. By benefitting the grower primarily, the entire citrus industry is benefitted and thus the Act protects the industry as a whole. The industry cannot survive unless the grower survives. The grower cannot survive if he cannot receive at least the cost of producing his product. If the grower cannot be made to survive, then the entire industry will collapse because the product itself will not be produced. However, it is only

necessary to consider that the Court was not authorized or warranted in holding the Act unconstitutional because of harmful results to the grower when no grower was before the Court complaining, nor was the effect of the Act upon the grower at all involved or explored or presented in the case.

Certain findings of fact purportedly made by the Court in its opinion are not sustained by the evidence. Thus the statement that the cooperative organizations did not pay cash for their fruit to the growers, but merely credited them with the amount involved, which amount the organizations were not expected to pay unless the market prices enabled them so to do, is not borne out by the evidence. See affidavit of J. F. Mays, representative of State Commissioner of Agriculture. The evidence of plaintiffs to the contrary is at best merely hearsay. Likewise the finding of the Court that the State Commissioner must have construed the Act so as to authorize him to discriminate against the independent canners. Plaintiffs presented no evidence that the Commissioner had so construed the Act, but the Commissioner's own evidence showed he did not so construe it. The Court found that plaintiffs had made contracts for the sale of citrus juice for future delivery which they were forced to cancel when the "cost price" was fixed by the Commission. One of plaintiffs testified he had existing contracts for $100,000 worth of processed grapefruit to be purchased by certain Pacific Coast dealers and distributors but that such distributors had agreed to increase their cost price of the processed product if the Act here involved were upheld. Thus the findings of the District Court, if the same can be classified as findings, present substantial questions because of the extremely doubtful character of the testimony to sustain them.

No finding or adjudication was made by the District Court as to the requisite jurisdictional amount of $3,000, exclusive

of interest and costs, being involved in the case. But in proceeding to and passing on the merits of the case the Court, by necessary implication, held the existence of such jurisdictional amount. The evidence wholly fails to sustain the existence of the requisite amount to confer jurisdiction upon the Federal Courts. See *McNutt, Governor* v. *General Motors Acceptance Corporation,* 298 U. S. 178, 80 L. Ed. 1135; *McNutt, Governor* v. *McHenry Chevrolet Co. Inc.,* 298 U. S. 190, 80 L. Ed. 1141; *KVOS, Inc.,* v. *Associated Press,* 299 U. S. 269, 81 L. Ed. 183; In the *General Motors* case, *supra,* the Supreme Court held that even though the jurisdictional facts be not challenged, the plaintiffs must support them by competent proof and that the Court "may still insist that the jurisdictional facts be established or the case be dismissed, and for that purpose the court may demand that the party alleging jurisdiction justify his allegations by a preponderance of evidence" (298 U. S. 188). Certainly before striking down a State statute the Court should require the existence of jurisdictional facts be made affirmatively to appear. While under the *General Motors* case the Court may, merely for purpose of passing upon interlocutory injunction, in its discretion not require proof of the jurisdictional amount, where not challenged in some appropriate manner, yet when the Court presumes to finally adjudicate a State law unconstitutional, whether such adjudication be made at the interlocutory stage or at final hearing, the Court should not indulge a discretion in the matter, but should as a matter of positive duty require proof of jurisdictional facts before pronouncing such drastic judgment. In determining whether the requisite jurisdictional amount is in controversy, where it does not appear that the plaintiff is deprived of its license or is prevented by the regulation from prosecuting its business, the question is not the value or net worth of the business, but the value of the right to be free from the regulation, and this may be

measured by the loss, if any, that would follow the enforcement of the rule prescribed. *McNutt* v. *General Motors Acceptance Corporation, supra; Kroger Grocery & Baking Co.* v. *Lutz, Attorney General,* 299 U. S. 300, 81 L. Ed. 251.

The substance of the questions presented as aforesaid cannot be doubted. Plaintiffs contended the questions were quite substantial when they filed their complaint. The District Court of three Judges considered the questions substantial when it struck down the State law upon the interlocutory hearing, without waiting for further exposition of facts or further argument of counsel. Defendants have never denied the questions were substantial and do here assert it. The situation is materially different than if the Court had merely granted interlocutory injunction pending further proceedings in the cause and deferred passing upon the constitutional questions until after all the evidence was in and final hearing was had. Here, the District Court took an extremely short cut and struck down the law as unconstitutional upon the interlocutory hearing and even went into the facts as "shown" by the evidence introduced at that hearing. Defendants later filed their answer setting forth defenses in law and in fact, but such was merely to save their day in Court.

**E—Cases Sustaining Jurisdiction.**

The following cases are believed to sustain the jurisdiction of the Supreme Court: *Lemke* v. *Farmers Grain Company,* 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 458; *Connolly* v. *Union Sewer Pipe,* 184 U. S. 540, 22 S. Ct. 431, 46 L. Ed. 679; *Savage* v. *Jones,* 225 U. S. 501, 32 S. Ct. 715, 56 L. Ed. 1182; *Polk Company* v. *Glover, etc.,* — U. S. —, 59 S. Ct. 15, text 17, — L. Ed. —; *Borden's Farm Products Co.* v. *Baldwin,* 293 U. S. 194, 55 S. Ct. 187, 79 L. Ed. 281; *Hegeman Farms Corp.* v. *Baldwin,* 293 U. S. 163, 55 S. Ct. 7; *West Coast Hotel Co.* v. *Parrish,* 300 U. S. 379, 57 S. Ct. Rep. 578;

*Nebbia* v. *People of the State of New York*, 291 U. S. 502, 54 S. Ct. Rep. 505; *Milk Control Board of Pennsylvania* v. *Eisenberg Farm Products*, — U. S. —, 59 S. Ct. 528; *Sligh* v. *Kirkwood*, 237 U. S. 52, 35 S. Ct. Rep. 501; *Townsend* v. *Yeomans*, 301 U. S. 441, 57 S. Ct. Rep. 842; *Barney* v. *City of New York*, 193 U. S. 430, 25 S. Ct. 502; *McNutt* v. *General Motors Acceptance Corporation*, 298 U. S. 178, 80 L. Ed. 1135.

**F—Appending Copies of Opinions, etc.**

There are appended hereto copies of the opinion of the District Court dated April 13, 1939, filed May 3, 1939, and of the Order of the District Court granting the motion for interlocutory injunction, dated and filed April 28, 1939, and copy of the complaint filed March 23, 1939, and copy of the amendment to the complaint filed April 10, 1939.

Respectfully submitted,

GEORGE COUPER GIBBS,
*Attorney General of Florida;*
H. E. CARTER,
*Asst. Attorney General of Florida;*
WM. C. PIERCE,
O. K. REAVES,
E. GLENN GRIMES,
*Attorneys for Defendants.*
*(Appellants in the Supreme Court.)*

## EXHIBIT "A".

(Title Omitted)

This case was argued and submitted on April 10th, on the bill and testimony.

The defendants appeared and though they had not filed answers, argued the case and requested the Court to pass on all questions presented, and especially on the constitutionality of the Act involved.

The Act is found in Florida Acts of 1935, page —.

Grower's Cost Guarantee Law.

AN ACT relating to citrus fruit; Prescribing conditions and limitations upon the sale, marketing and processing thereof, and the effect of contracts of sale and of marketing and processing agreements.

WHEREAS, it is found by the Legislature and hereby declared that the production and distribution of citrus fruit is a paramount industry in Florida upon which the prosperity of the State in a large measure depends; that such fruit and the juices thereof have become and are generally used in great and rapidly increasing quantities, both voluntarily and upon advice of physicians, by people of all classes, ages and conditions; that it is necessary for the reasonable comfort, welfare and health of the people and in order to build up their strength and vigor, that an adequate and dependable supply of high grade citrus fruit in the State of Florida is therefore hereby declared to be a business affecting the public health and interest, that unfair, unjust, destructive, demoralizing, and uneconomic trade practices have been and are continuing to be carried on in the sale and distribution of citrus fruit in this state to the extent that such fruit has been and is continuing to sell in many cases at prices below the cost of production and the constant, dependable and adequate supply of such fruit for sale and consumption is thereby so seriously imperiled as to threaten the break down of the industry; that the present acute economic condition in Florida is in part the consequence of a severe and in-

creasing disparity between the prices of citrus fruit and other commodities; that it is both expedient and necessary to build up the quality and reputation of Florida's citrus fruit in the market and to stabilize the Florida citrus industry and to protect the public and the growers against fraud, deception, and financial loss through further continuation of unscrupulous practices and haphazard methods in connection with the marketing of citrus fruits, and to that end, to assure the grower returns at least equal to the cost of production of high grade citrus fruit.

THEREFORE, in the exercise of the police power of the State, for the purpose of protecting and promoting the public health and general welfare,

* * * * * * *

SECTION 3. The Commissioner of Agriculture in his discretion and by and with the consent and advice of the Governor shall have the power to declare the existence of a State Emergency in the Citrus Industry, and upon petition or petitioners signed by persons, firms, corporations, or associations, owning or controlling 50% or more of the producing acreage of citrus fruit, requesting such action, being filed with the Citrus Commission, such percentage to be based upon the survey heretofore made by the Federal Emergency Relief Administration and supplemented by such further surveys as the Citrus Commission from time to time may make, and after the Citrus Commission shall have procured from the producers, shippers, or handlers of citrus fruit, not subject to the provisions of this Act, binding agreements to conform thereto and abide by its terms, the Florida Citrus Commission shall determine and record in permanent form annually the average reasonable cost per standard packed box of producing citrus fruit and every contract, agreement, plan or arrangement with the grower by or under which his citrus fruit shall be bought, marketed, or processed shall be held to require that the person, firm, corporation, or association buying, marketing or processing said citrus fruit shall in any event pay the grower said

cost of production, to be ascertained by multiplying the said cost per standard packed box as shown by the record of the Commission current at the time the contract, agreement, plan of arrangement with the grower shall be made, by the number of packed boxes so bought, marketed and processed during the season or under the particular contract, agreement, plan or arrangement if for less than a marketing season. Any contract, plan, scheme or device whereby it shall be attempted to preclude the grower from recovering such cost of production shall to that extent be held to be unlawful and against the public policy of this State, but in all other respects and particulars contracts of sale, marketing and processing shall be valid and binding and the terms thereof shall measure the rights of the respective parties.

We are not concerned with Sections one and two, but the provisions of Section three raise all the questions with which we are concerned.

Taking up these in the order of their importance, we consider whether it violates the due process clause of the Fourteenth Amendment. We are aware of the fact that many of the later decisions on the due process clause have gone far beyond the earlier ones.

The latest authoritative decision in which this question is discussed is West Coast Hotel Co. *v.* Parrish, 300 U. S. 491, which says:

> "The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting the deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject

and is adopted in the interests of the community is due process.

This essential limitation of liberty in general governs freedom of contract in particular. More than twenty-five years ago we set forth the applicable principle in these words, after referring to the cases where the liberty guaranteed by the Fourteenth Amendment had been broadly described.

But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community." Chicago B. & Q. R. Co. *v.* McGuire, 210 U. S. 549, 567.

The definition of due process here given contains two positive requirements. First: the regulation must be as applied to the Citrus business, reasonable. To be reasonable it must not be arbitrary, nor should it be unjust to any of those whom it undertakes to regulate. Second: it must have been adopted in the interests of the community. In other words, the community or the public must have an interest in or be concerned with such regulation.

The protection of the public should be the prime purpose of the regulation and not the business to be regulated.

Take the citrus industry as a whole and it is manifest that it is as much dependent on the canners as upon the growers, for we all know that the fruit in its natural State cannot be stored for future sale as grain is done, but that the juices when processed and canned can be. So if a crop is raised too large to be sold as gathered, the price of the fruit will be greatly reduced and the loss much greater than if the excess fruit is canned and the juices stored for future sale. The canner who processes the fruit and preserves the juice plays an important part in buying the excess fruit

and processing it. The Act recognizes the canners in the reference to "the fruit and the juices thereof", and to processing the same. The testimony showed that this year's crop is large, and the Citrus Commission fixed the cost to the grower of raising the crop of grapefruit at thirty-two cents a box, and that the canner could not pay that price and the cost of processing it and sell the juice without suffering a loss.

It further showed that the canners had established businesses of years standing with a large investment, employing several thousand employees.

That they had made contracts for sale of juice for future delivery and that they were forced to cancel when the cost price was fixed by the Commission.

The effect of this was that the canners were penalized for the benefit of the growers if the canners continued business.

The testimony also showed that many of the growers had organized cooperative corporations to process their grapefruit, the cooperative did not pay cash for their fruit to these growers, but credited them with the amount of the price of the fruit and were not expected to pay for it unless the market prices enabled them to pay it, and the Commissioner did not enforce payment while requiring payment of the regular canners.

This certainly was discrimination against the canners, and the Commissioner must have construed the Act so, as to authorize him to do this.

The Act makes a sale for less than the price fixed unlawful. Suppose the price fixed by supply and demand is less than that fixed by the Commission, a sale by a grower for any less price would be unlawful.

If his actual cost of raising his crop were ten thousand dollars, he could not sell it for eight thousand dollars and so minimize his loss, but would be compelled to let it spoil on the trees and so lose the whole crop.

Is not this alone sufficient to make the Act arbitrary and prejudicial? We find the Act unconstitutional.

There is one other feature of the Act which may not render it violative of the Constitution, but certainly requires enjoining the Commissioner from enforcing the fixed price.

The Act provides that *after* the Citrus Commission shall have procured from producers, shippers, or handlers of citrus fruit, not subject to the provisions of this Act, binding agreements to conform thereto and abide by its terms, the Florida Citrus Commission shall determine and record in permanent form annually the annual reasonable cost per standard box, of producing citrus fruit, etc.

There is no proof in the record of any such consent and agreement having been secured by the Commission.

We therefore conclude that the injunction should be granted.

LEON MCCORD,
*U. S. Cir. Judge.*
ROBERT T. ERVIN,
ALEXANDER AKERMAN,
*Judges.*

April 13, 1939.

**EXHIBIT "B".**

[Title omitted]

**Order of the Court.**

This cause coming on to be heard before the undersigned Judges on the Motion for an Interlocutory Injunction, and after hearing the evidence and argument of counsel and for the reasons to be expressed in an opinion to be filed later, It is Considered, Ordered and Decreed by the Court that the Motion for Interlocutory Injunction be and the same is hereby granted, and the restraining order heretofore issued by the District Judge is continued in full force and effect until the final hearing in this case or until the further order of the Court.

Done and Ordered, this the 28th day of April 1939.

LEON MCCORD,
*Judge, United States Circuit Court of Appeals.*
ROBERT T. ERVIN,
*United States District Judge.*
ALEXANDER AKERMAN,
*United States District Judge.*

## EXHIBIT "C".

[Title omitted]

### Complaint.

Come now the Plaintiffs and would show unto the Court:

I.

(a) That the Lakeland Highlands Canning Co. Inc., is a corporation organized and existing under the laws of the State of Florida, duly authorized and qualified to do business in the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is Highlands City, in Polk County, Florida;

(b) That The Polk Company is a corporation organized and existing under the laws of the State of Indiana, duly authorized and qualified to do business in the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is Polk County, Florida;

(c) That Roberts Brothers, Inc., is a corporation organized and existing under the laws of the State of Maryland, duly authorized and qualified to do business in the State of Florida, and engaged extensively, as more particularly hereinafter set out, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff for canning citrus products is in Polk County, Florida;

(d) That Florida Grapefruit Canning Co., is a corporation organized and existing under the laws of the State of Florida, duly authorized and qualified to do business in the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is Manatee County, Florida;

(e) That Apte Brothers Canning Co. is a co-partnership composed of D. J. Apte and R. W. Apte, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is Hillsborough County, Florida;

(f) That Floridagold Citrus Corporation is a corporation organized and existing under the laws of the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is in Polk County, Florida;

(g) That Bordo Products Company is a corporation organized and existing under the laws of the State of Illinois, duly authorized and qualified to do business in the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is in Polk County, Florida;

(h) That Hills Brothers Co. of Florida is a corporation organized and existing under the laws of the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is Tampa, Hillsborough County, Florida;

(i) That Bruce's Juices, Inc., is a corporation organized and existing under the laws of the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is Tampa, Hillsborough County, Florida;

(j) That Eckerson Fruit Canners, Inc., is a corporation organized and existing under the laws of the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is Sanford, in Seminole County, Florida;

(k) That Sundine Company is a Delaware corporation authorized to do business in the State of Florida, and engaged in the citrus canning business in this District.

II

That the defendant, Nathan Mayo, is Commissioner of Agriculture of the State of Florida, and maintains his principal office in the County of Leon, State of Florida, with representatives within the jurisdiction of this Court for the purpose of enforcing the act attacked hereinafter, in this complaint.

III

This cause involves a controversy in excess of $3,000.00 exclusive of interest and costs, and arises under the Constitution of the United States of America.

IV

That during the past decade the canning of grapefruit and grapefruit juice with other citrus has developed into one of the principal industries of the State of Florida. The principal products canned are grapefruit hearts or sections and grapefruit juice, other citrus juices, orange juice and combination juices or grapefruit and oranges, and some citrus salad; the grapefruit and grapefruit juice constituting the large majority of the citrus canning industry. During the past seven years the volume of the products canned is as follows:

(Converted into No. 24/2 cans)

| | Grapefruit. | Grapefruit Juice. | Combination Juices. |
|---|---|---|---|
| 1931-1932 | 895,962 cases | 235,034 cases | |
| 1932-1933 | 2,138,285 | 722,721 | |
| 1933-1934 | 2,145,499 | 605,817 | |
| 1934-1935 | 3,539,456 | 2,175,695 | |
| 1935-1936 | 2,149,610 | 1,608,287 | 80,800 cases |
| 1936-1937 | 3,971,624 | 3,709,751 | 265,684 |
| 1937-1938 | 3,419,226 | 3,370,002 | 574,329 |

During this period of time there was also canned approximately 1,500,000 cases of orange juice and 200,000 cases of citrus salad and 500,000 cases of combination juices.

This industry constitutes an important and valuable outlet for grapefruit in the State of Florida. During the last five years the amount of grapefruit thus utilized was 24,334,804 boxes.

During said five-year period the percentage of grapefruit grown in Florida that has been used in the canning production has steadily increased, as shown by the following table:

| Percent of production used by the Canners | 1933-34 | 1934-35 | 1935-36 | 1936-37 | 1937-38 |
|---|---|---|---|---|---|
| | 21.78% | 36.51% | 32.01% | 37.14% | 41.44% |

Of this total pack plaintiffs herein for the past three years packed the following aggregate amounts and average annual amounts in cases:

Canned Grapefruit Products

| Plaintiff. | 3-year total pack. | Annual average pack. |
|---|---|---|
| Lakeland Highlands Co. | 980,081 | 326,693 |
| The Polk Company | 2,587,000 | 862,333 |
| Roberts Brothers, Inc. | 355,415 | 118,471 |
| Florida Grapefruit Canning Co. | 765,241 | 255,080 |
| Apte Brothers Canning Co. | | |
| Floridagold Citrus Corp. | 1,816,427 | 605,475 |
| Bordo Products Company | 1,434,849 | 478,283 |
| Hills Bros. Co. of Fla. | 1,209,038 | 403,012 |
| Bruce's Juices, Inc. | 618,298 | 206,099 |
| Eckerson Fruit Canners, Inc. | | |
| Sundine Company (1935-36 season only) | 80,000 | 80,000 |

Plaintiffs herein have thus packed over the 3-year period far in excess of 60% of the total pack of the canned grapefruit and grapefruit juice in the State of Florida.

Estimated pack for the present season 1938-1939 was that the pack would be far in excess of the pack for any period season in the history of the State of Florida; however, because of the facts and circumstances hereinafter alleged the

pack to date is approximately 2,000,000 cases less up to the time of filing this complaint than was packed during the same period of the season of 1936-1937, which was the largest season up until the present season; even though up to the effective date of the Regulation of the Citrus Commission, to-wit: January 19, 1939, these plaintiffs and all other canners had canned an unusually large volume of products.

IV-A.

Plaintiffs would show unto the Court that each of them, since January 19, 1939, has been offered large volumes of grapefruit from many of the growers of the State of Florida at prices ranging from 12 for fruit to be canned into grapefruit juice, to 20¢ to 25¢ per field box for fruit to be canned into sections or hearts; and that each of said plaintiffs, except for the provisions of the said Regulation and said Act, could and would have purchased said grapefruit and canned the same and sold the canned product to the different distributors at a profit far in excess of $3,000.00.

IV-B.

Many growers own their own canning plants and have been canning their grapefruit without the burden of the law hereinafter referred to; that many growers have been canning their grapefruit through cooperative organizations to which the defendant contends the price law does not apply.

That by reason of the foregoing facts canned grapefruit is now being offered for sale at prices which do not net the grower 32¢ per box on the tree.

These plaintiffs allege that because of the foregoing facts the said Growers' Cost Guarantee Law, hereinafter referred to, and the Regulation thereunder, are discriminatory in that it attempts to force these plaintiffs to pay a minimum price for their raw products while permitting others to operate in competition to these plaintiffs unrestrained by the provisions of said Law and Regulation; and unless the relief herein prayed for is granted these plaintiffs will have their property taken without due process of law, and will suffer irreparable damages to each far in excess of $3,000.00.

V.

Canned grapefruit and grapefruit juice packed in the State of Florida are widely distributed in interstate commerce and in excess of 99% of all canned grapefruit products canned by the plaintiffs named herein are canned solely for and go into interstate commerce; such products being sold in almost every state in the United States, and in foreign countries.

Of the canned products of the plaintiffs herein the percentage of their grapefruit and grapefruit juice pack sold in interstate commerce is as follows:

| Plaintiff. | Sold in interstate commerce. | Sold in Florida. |
|---|---|---|
| Lakeland Highlands Canning Co., Inc. | 99½% | ½% |
| The Polk Company | 100% | none |
| Roberts Brothers, Inc. | 99% | 1% |
| Florida Grapefruit Canning Co. | 99½% | ½% |
| Apte Brothers Canning Co. | 99¾% | ¼% |
| Floridagold Citrus Corporation. | 99.92% | .08% |
| Bordo Products Company | 100% | none |
| Hills Brothers Co. of Florida | 97% | 3% |
| Bruce's Juices, Inc. | 99 14/15% | 1/15 of 1% |
| Eckerson Fruit Canners, Inc. | 98% | 2% |
| Sundine Company | 99.90% | 1/10% |

The amount of such canned citrus products consumed in the S. 'e of Florida is negligible.

During the 1936-1937 season, that is, beginning November 1st, 1936, up to and including October 15, 1937, there were exported 847,884 cases of canned grapefruit, of which 843,800 cases were shipped to the United Kingdom, and the remaining number of cases were shipped to France, Belgium, Holland, Germany, India, Egypt and South America, and during the same period of time there were exported to the same countries an aggregate of 34,427 cases of grapefruit juice.

VI.

The packing season for the canning of citrus products grown in the State of Florida begins about the first of November of each year and reaches volume production in about two weeks, and the canning continues until June or July of the following year. Preparations for canning necessitates the ordering of cans, labels, making contracts for the purchase of fruit, securing labor, the planning of factory operations in general. In addition it is the commercial practice, and frequently financing of the pack requires the packer to secure sales orders for the finished product in advance of or at the opening of the packing season.

VII.

During the past six years the canning of citrus products in other areas has largely increased and is now in serious competition with the citrus packed in the State of Florida. During the 1937-1938 season there was produced in the State of Texas 102,483 cases of grapefruit sections or hearts and 4,344,540 cases of grapefruit juice, and it is estimated that the crop of grapefruit in Texas this season will be approximately 15,000,000 boxes, which is by far the largest crop in the history of the industry in Texas.

The territory of Puerto Rico has produced approximately 200,000 cases of grapefruit sections each year for the past few years. In addition, production of canned grapefruit in states other than Florida has amounted to approximately 100,000 cases.

The crops in the states other than in the State of Florida, as well as in this State, have continued to grow over a period of years and the canned citrus products produced in states other than the State of Florida actively compete in interstate commerce with the canned citrus products produced in Florida. In addition, canned grapefruit juice competes with other fruit juices, such as tomato juice and pineapple juice, and any impediment upon the ready purchasing of grapefruit juice will cause a shift in consumption to other juices and diminish the volume of production and shipment in interstate commerce from the State of Florida.

Within the last few days canned grapefruit juice produced and canned in the State of Texas has been offered for sale at a price of from 42¢ to 45¢ per doz. f.o.b. Texas in large volumes, and unless the injunction herein prayed for is granted these plaintiffs will be unable to compete with such competition. Plaintiffs are informed and believe and so allege the facts to be that the different companies canning in the State of Texas are now buying grapefruit at a price of 12¢ to 20¢ per field box delivered to the canning plant, which is less than one-half of the minimum price fixed by the regulation.

That over a period of years Florida canned grapefruit has enjoyed such a place in the markets that it could demand a slightly higher price than that canned in Texas and other places but unless the relief herein prayed for is granted so these plaintiffs will not have to face a "pegged" price, they will be unable to can grapefruit to compete with that canned in Texas and other places, and the canning industry of Florida will suffer an irreparable loss and each of these plaintiffs will thereby suffer damages in excess of $3000.00.

VIII.

The plaintiffs and each of them have invested in the State of Florida, in canning factories, receiving stations, and other necessary equipment far in excess of $100,000.00, and that the total of such investments by all of the plaintiffs exceed the sum of $2,000,000.00;

That annually during the citrus packing season in Florida plaintiffs operate their several canning plants and factories and employ daily in and about the processing, canning, labelling and packing of grapefruit sections and juice approximately 5000 persons, and the weekly pay-roll of the plaintiffs throughout the canning period for the citrus season amounts to approximately $100,000.00 each, and every week of their operation.

IX.

That there was grown in the State of Florida during the present season approximately 21,000,000 boxes of grapefruit, which is the largest production in the history of the citrus industry in the State of Florida; that because of the enactment of the statute hereinafter referred to and the

regulation promulgated thereunder by the Florida Citrus Commission it has been impossible for these plaintiffs to operate their factories and pay the grower the sum of 32¢ per field box and that there are approximately 2,000,000 cases less canned in the State of Florida at this time than there were at the corresponding date in the season 1936-1937, which was the heaviest pack up until this season, and that the grapefruit which would have been put in said cans, had the plaintiffs been permitted to operate without the interference of the Act hereinafter set forth, is practically all decayed and rotting because the growers, who did not own a canning plant or belong to a cooperative were unable to sell their fruit.

Many growers in the State of Florida are ready, willing and anxious to dispose of their fruit to the plaintiffs or some of them at whatever price market conditions will warrant, but plaintiffs are unable to purchase said fruit because of the Act hereinafter referred to, and said fruit will be permitted to drop from the trees and to rot and decay in the groves.

X.

Plaintiffs only operate their canning plants during the season for packing and canning which is a period of approximately seven months as hereinbefore alleged; that in order to be prepared to operate their plants during said season it is necessary that the plaintiffs keep on an annual pay-roll many employees during the period of time when they are not in operation and that when the plants are not in operation the plaintiffs suffer large expenses and costs in overhead expenses, salaries, administrative expenses, factory personnel, electricity or other power for operating their plants, and taxes. Plaintiffs allege that if this Court does not grant the injunction herein prayed for they will be unable to operate the remaining portion of this season and the loss to each and every of said plaintiffs will far exceed the sum of $3,000.00 in overhead costs, salaries, etc. as above set forth.

Plaintiffs say that each of them suffer losses in excess of $400.00 per week in pay-roll expenses alone while they are shut down and if the relief prayed for herein is not granted they will be forced to keep their plants closed for the re-

mainder of the season and each thereby suffer loss in excess of $4500.00 for that item of expense alone.

XI.

Plaintiffs in their several businesses depend to a large extent on certain distribution channels and that because of the inability of the plaintiffs to operate their plants this season due to the Act and the Regulation hereinafter referred to, the Plaintiffs have been and will be unable to take care of the requirements of their different distributors and dealers throughout the United States and foreign countries; that these distributors and dealers have over a period of years built up good will for the different brands canned and labelled by the plaintiffs and have used merchandising efforts such as advertising and display to increase the consumption of the canned products of these plaintiffs, and to further the good will of said products.

Plaintiffs allege that unless the relief herein prayed for is granted, the plaintiffs will be unable to can their grapefruit and grapefruit juice in accordance with the requirements of their trade and that they and each of them will suffer irreparable loss and damage to their trade, good will and trade-marks, far in excess of $3,000.00 to each of said plaintiffs; that if over a period of time these plaintiffs are ever able to regain the good will for their products that they now enjoy, it would only be at a tremendous cost and expense to these plaintiffs and each of them.

These plaintiffs further allege that grapefruit and grapefruit juice are in competition with many other canned products such as tomato juice and pineapple juice, and that to meet said competition it is necessary that the products be continuously before the public, and that the retail price of same be kept on a competitive base with other products; that if this Court does not grant the relief herein prayed for canned grapefruit and grapefruit juice canned by these plaintiffs will be supplanted by other products because of the inability of these plaintiffs to can grapefruit and grapefruit juice.

If these plaintiffs were able to pay 32¢ per field box to the growers as required by the Act hereinafter referred

to, and the Regulation promulgated thereunder, it would be necessary for these plaintiffs to receive for the canned products between 62¢ and 70¢ per doz. for grapefruit juice, and that there is now being quoted in the State of Texas grapefruit juice at 42¢ per doz.; that should these plaintiffs attempt to comply with the Act hereinafter referred to and the Regulation thereunder by paying 32¢ to the grower per field box, they would each suffer a tremendous loss in meeting competition of the Texas juice as quoted above.

XII.

These plaintiffs have been warned by the Commissioner of Agriculture that if they attempt to operate their plants and not pay the grower 32¢ per field box their licenses will be revoked, but these plaintiffs allege that there are several thousand cases of grapefruit and grapefruit juice in the State of Florida at this time which have been canned and are now being canned upon a cooperative basis and there is now being offered on the markets canned grapefruit canned in the State of Florida by some of the cooperative associations at a price of 80¢ per doz., and these plaintiffs allege that when the necessary costs of canning and sales thereof are deducted from the returns on a basis of 80¢ per doz., there is not a sufficient amount left to pay the grower the sum of 32¢ per field box, and that if the Act hereinafter set forth and the Regulation thereunder are held valid and enforceable then these plaintiffs will be unable to compete with the fruit and fruit juices that are being canned by the cooperative organizations and the large investments of these plaintiffs will be lost, resulting in irreparable damage to each of the plaintiffs in a sum far in excess of $3,000.00.

XIII.

That the Legislature of the State of Florida of 1935 enacted Chapter 16862, which is hereinafter referred to as the Growers' Cost Guarantee Act, copy of said Statute being hereto attached, marked Exhibit "A", and by reference made a part of this Complaint.

XIV.

That the Legislature of the State of Florida of 1937 enacted Chapter 17777 Laws of Florida, hereinafter referred to as the Bond and License Law, a copy of said Act being hereto attached, marked Exhibit "B", and by this reference made a part of this Complaint.

XV.

Each of the plaintiffs herein is a canner of citrus fruits and holds a license issued by the Commissioner of Agriculture under the Bond and License Law, and has filed a good and sufficient bond in accordance with such law.

XVI.

That under the provisions of the Growers' Cost Guarantee Act during the present season the defendant, Nathan Mayo, as Commissioner of Agriculture, by and with the consent and advice of the Governor of the State of Florida has declared the existence of a state of emergency in the citrus industry, on or about the 13th day of January, 1939.

That the Florida Citrus Commission, on or about the 16th day of January, 1939, passed a certain Resolution, copy of which is hereto attached, marked Exhibit "C", and by this reference made a part of this Complaint.

The said Resolution states that there has been presented to the Florida Citrus Commission petitions signed by persons, firms, corporations and associations, which the Commission finds own or control 50% or more of the producing acreage of citrus fruit and 50% or more of the producing acreage of grapefruit in the State of Florida, requesting the Commission to determine the average reasonable cost per standard packed box of producing grapefruit, but these plaintiffs allege that the Citrus Commission did not have filed before it at the time of the passage of said Resolution petitions signed by persons, firms or corporations owning 50% or more of the producing acreage of citrus fruit in the State of Florida.

XVII.

The said Growers' Cost Guarantee Act provides that the basis for ascertaining whether the petitions were signed by persons, firms or corporations owning or controlling 50% or more of the producing acreage of citrus fruit was to be the survey heretofore made by the Federal Emergency Relief Administration and supplemented by such further survey as the Citrus Commission may from time to time make.

Plaintiffs allege that the determination of the percentage was not based upon any survey made by the Federal Emergency Relief Administration, nor was it supplemented by any survey made by the Florida Citrus Commission, and that therefore the Florida Citrus Commission had no right, authority, power or jurisdiction to issue the Regulation, copy of which is attached hereto as Exhibit "C".

XVIII.

The said Growers' Cost Guarantee Act likewise provides that before determining the reasonable cost per standard packed box the Citrus Commission should have from the producers, shippers and handlers of citrus fruit, not subject to the provisions of the Act, binding agreements to conform thereto and abide by its terms. Plaintiffs allege that at and before the passage of the Resolution, a copy of which is attached hereto as Exhibit "C", the Citrus Commission had procured no agreements whatsoever from producers, shippers or handlers of fruit, not subject to the provisions of the Act, and therefore the Florida Citrus Commission had no power, authority or jurisdiction to issue the said Regulation, copy of which is hereto attached as Exhibit "C".

XIX.

Plaintiffs further allege that the 32¢ price for grapefruit determined by the Florida Citrus Commission in its Resolution dated January 16, 1939, copy of which is attached hereto as Exhibit "C", is arbitrary, capricious, unreasonable, unfair, inequitable and confiscatory and con-

stitutes a denial of property rights of these plaintiffs without due process of law; that said price was not properly determined by the Florida Citrus Commission, as required by the Growers' Cost Guarantee Act, but was adopted as the result of experiments on certain isolated groves by certain persons who were not members of the Florida Citrus Commission, and that the said price is not the actual cost of production nor an average reasonable cost per standard packed box of grapefruit throughout the State of Florida;

That among other things, the said 32¢ basis includes 9.8¢, considered by the Commission to represent interest on investment by the grower.

XX.

Plaintiffs further allege that Eckerson Fruit Canners, Inc., one of the plaintiffs herein, heretofore obtained a temporary injunction from the Circuit Court of Seminole County, Florida, in a suit wherein the Commissioner of Agriculture claimed that the said plaintiff was violating the Growers' Cost Guarantee Act by operating its factory under a certain contract with the grower, whereby the said plaintiff was canning grapefruit for the account of the growers and charging the growers for the cost of canning; that the said cause was appealed to the Supreme Court of Florida, which Court on March 17, 1939, rendered its opinion holding that said contract did violate the provisions of the said Growers' Cost Guarantee Law, but in said cause the said Supreme Court of Florida did not consider the constitutional validity of the Growers' Cost Guarantee Law.

That for a period of approximately fourteen days these plaintiffs, or a majority of them, have been attempting to operate their plants under contracts somewhat similar to the said contract of the plaintiff, Eckerson Fruit Canners, Inc., but that since the decision above referred to, rendered by the Supreme Court of Florida, the defendant, Commissioner of Agriculture, has threatened to revoke the license of each and every of these plaintiffs if they continue to operate under such contracts and these plaintiffs believe and so allege that the said Commissioner will revoke their licenses unless enjoined by this Honorable Court.

## XX-A.

Plaintiffs say that in excess of 99% of their finished canned products have gone and do go directly into interstate commerce and are shipped to the several States of the United States as well as to foreign countries, and that the enforcement of the Act will violate Article I, Section 8 (3) of the Constitution of the United States, as it imposes a burden on and directly interferes with interstate commerce.

If said law and the Regulation thereunder are held valid then these plaintiffs will be unable to operate their plants, and can grapefruit and grapefruit juice, and the flow of their canned grapefruit and grapefruit juice by these plaintiffs into interstate commerce will be completely stopped.

The effect of said Act will be to attempt to fix the sale prices of grapefruit and grapefruit juice canned in the State of Florida wherever the sales may be made in the United States or in foreign countries, although grapefruit and grapefruit juice canned in the State of Florida under the provisions of said Act and the Regulation thereunder must compete in the open market with grapefruit and grapefruit juice canned in other states.

## XXI.

The Growers' Cost Guarantee Act is unreasonable, arbitrary and vague.

The said Act is so vague and indefinite that the true intent and purpose of the Act cannot be ascertained therefrom;

(a) the said Act provides that "petitions must be signed by persons, firms, corporations, owning or controlling 50% or more of the producing acreage of citrus fruit" but the word "control" is not defined in any manner in said Act, and because of the many applications of said word and the varying definitions thereof the Act is vague and indefinite as to the intention of the Legislature as to whom should sign said petitions.

(b) The Act further provides that "the Citrus Commission shall have procured from the producers, shippers or handlers of citrus fruit, *not subject to the provisions* of this

Act, binding agreements to conform thereto and abide by its terms" before the Citrus Commission shall determine the cost to the grower.

The Statute does not define which producers, shippers or handlers of citrus fruit are subject or not subject to the provisions of the Act.

Handlers of citrus fruit, who transact their business outside the State of Florida are certainly not subject to the provisions of said Act, and could not even be known to the Citrus Commission, and it would be impossible for the Citrus Commission to procure agreements from all the handlers of citrus fruit; therefore, the provisions of the said Act could not be put into force and effect by the said Florida Citrus Commission.

XXII.

The Act is further vague, indefinite, uncertain and contrary in that it provides that every contract, agreement, plan or arrangement "* * * shall be held to require that the person, firm, corporation or association buying, marketing or processing said citrus fruit shall in any event pay the grower said cost of production" but provides no penalties whatsoever for violation of said quoted provisions, nor provides any means or method of enforcing the same whatsoever.

The Act likewise provides that "any contract, plan, scheme or device whereby it shall be attempted to preclude the grower from recovering such cost of production * * * shall" be unlawful and against public policy to that extent but further provides "but in all other respects and particulars contracts of sale, marketing and processing shall be valid and binding", so that the entire Act is so vague, indefinite and uncertain that it is impossible to tell who or what transactions are subject to the provisions thereof.

XXIII.

The defendant contends that under the Bond and License Act, copy of which is attached hereto as Exhibit "B", he has the power to and will revoke the licenses of these plaintiffs, and each of them if they do not pay 32¢ to the grower

for each field box of grapefruit received by them for canning purposes.

These plaintiffs allege that the defendant, Commissioner of Agriculture, is without authority whatsoever to revoke the licenses of these plaintiffs or either of them for their failure to comply with the provisions of the Growers' Cost Guarantee Act or the Regulation promulgated thereunder, but that unless restrained by this Honorable Court the said Commissioner will illegally and improperly and without any authority whatsoever, revoke the licenses of these plaintiffs and each of them, and that thereupon the plaintiffs will be forced to stop their businesses or be subject to the heavy fine and imprisonment under Section 13 of the Bond and License Act.

## XXIV.

That unless restrained by this Court, defendant will revoke the license of each of these plaintiffs and will thereby deprive these plaintiffs, and each of them, of their property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

That if the licenses of these plaintiffs are revoked their right to transact their lawful business in the State of Florida will be taken from them, and their property will be further taken in the loss and irreparable damage caused by the revocation of their said licenses.

## XXV.

Plaintiff, Florida Grapefruit Canning Company further shows unto the Court that prior to the promulgation of the Regulation by the Citrus Commission, copy of which is attached hereto as Exhibit "C", it had entered into binding contracts with growers of grapefruit in the State of Florida, whereby the growers of grapefruit agreed to furnish to said plaintiff approximately 60,000 field boxes of grapefruit at a price less than 32 cents per field box; that said plaintiff likewise had contracts of sale whereby plaintiff agreed to sell canned grapefruit and grapefruit juice at a price that would have netted to said plaintiff a profit in excess of $3,000.00 over and above the cost of said fruit under the contracts

above referred to, and all additional costs in connection with the processing, canning and shipping thereof.

This plaintiff alleges that by the promulgation of said Regulation it has been unable to accept said 60,000 boxes of grapefruit at the price set forth in said contract, and that it is unable to pay 32¢ a box for grapefruit and process the same, and sell it to the consumer under his contract to said consumer; therefore the said Statute and the promulgation of said Regulation thereunder, have impaired the obligation of his contracts in violation of Article I, Section 10 of the Constitution of the United States.

WHEREFORE, the premises being considered, the plaintiffs pray:

*First.* That this Court take jurisdiction of this cause and of the parties hereto.

*Second.* That process of this Court be issued to the defendant, Nathan Mayo, as Commissioner of Agriculture of the State of Florida, under the rules of this Court, requiring the said Defendant to answer this Complaint.

*Third.* That this Court do grant to the Plaintiffs a temporary restraining order against the said Nathan Mayo, as Commissioner of Agriculture, his successor or successors, assistants, deputies, agent or agents, attorneys, servants, inspectors, employees or other representatives from suspending, revoking or cancelling the licenses of the plaintiffs and each of them, as citrus fruit dealers, and from enforcing or attempting to enforce in any manner or form whatsoever the said Regulation of the said Florida Citrus Commission, dated January 16, 1939, and Chapter 16862 Laws of Florida, 1935, being the Growers' Cost Guarantee Act, or in any manner molesting or interfering with the plaintiffs in the operation of their several canning plants and factories because of their failure to comply with the Regulation of the said Citrus Commission and said Chapter 16862 Laws of Florida, 1935.

*Fourth.* That after issuance of said temporary restraining order this Court do convene a Three-Judge Court, and after notice of hearing that said Three-Judge Court enter

a temporary injunction to the same effect as said restraining order.

*Fifth*. That upon final hearing the said Three-Judge Court enter a final order and decree making said injunction permanent.

And for such other and further relief as to the Court shall seem meet.

KNIGHT, THOMPSON & SUTTON,
By G. L. REEVES,
*Attorneys for All Plaintiffs.*

G. L. REEVES,
*Of Counsel,*
*Tampa, Florida.*

STATE OF FLORIDA,
*County of Hillsborough:*

Before me, the undersigned authority, on this 22nd day of March, A. D., 1939, personally appeared J. Adams Bruce, who, being by me first duly sworn, deposes and says that he is President of Bruce's Juices, Inc., one of the above named plaintiffs; that he is familiar with the contents of the above and foregoing Complaint and that the facts alleged therein are true and correct.

Affiant further says that the Defendant has threatened to suspend his license as well as the licenses of the other plaintiffs unless the plaintiffs abide by the provisions of the Regulation of the Florida Citrus Commission, dated January 16, 1939, and that he has reason to believe that the said Defendant will make good his threat and will revoke his license as well as the licenses of the other plaintiffs, unless enjoined by this Court.

J. ADAMS BRUCE.

Sworn to and subscribed before me this 22nd day of March, A. D. 1939.

CALLOWAY K. TYSON,
*Notary Public, State of*
*Florida at Large.*

[SEAL.]

My Commission expires Aug. 8, 1942.

## EXHIBIT "D".

### Growers' Cost Guarantee Law.

Chapter No. 16862.

Laws of Florida—Acts of 1935.

AN ACT relating to citrus fruit: Prescribing conditions and limitations upon the sale, marketing and processing agreements.

WHEREAS, it is found by the Legislature and hereby declared that the production and distribution of citrus fruit is a paramount industry in Florida upon which the prosperity of the State in a large measure depends; that such fruit and the juices thereof have become and are generally used in great and rapidly increasing quantities, both voluntarily and upon advice of physicians, by people of all classes, ages and conditions; that it is necessary for the reasonable comfort, welfare, and health of the people and in order to build up their strength and vigor that an adequate and dependable supply of high grade citrus fruit be constantly available, and the production, transportation, processing, distribution and sale of citrus fruit in the State of Florida is therefore hereby declared to be a business affecting the public health and interest, that unfair, unjust, destructive, demoralizing, and uneconomic trade practices have been and are continuing to be carried on in the sale and distribution of citrus fruit in this state to the extent that such fruit has been and is continuing to sell in many cases at prices below the cost of production and the constant, dependable and adequate supply of such fruit for sale and consumption is thereby so seriously imperiled as to threaten the break down of the industry; that the present acute economic condition in Florida is in part the consequence of a severe and increasing disparity between the prices of citrus fruit and other commodities; that it is both expedient and necessary to build up the quality and reputation of Florida's citrus fruit in the market and to stabilize the Florida citrus industry and to protect the public and the growers against fraud, deception, and financial loss through

further continuation of unscrupulous practices and haphazard methods in connection with the marketing of citrus fruits, and to that end, to assure the grower returns at least equal to the cost of production of high grade citrus fruit.

THEREFORE, in the exercise of the police power of the State for the purpose of protecting and promoting the public health and general welfare,

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. This Act shall be known and called the Growers Cost Guarantee Act.

Section 2. The term "Citrus Fruit" as used herein means and includes only the fruits Citrus Grandis, Osbeck, commonly called grapefruit, and Citrus Sinensis, Osbeck, commonly called oranges, and Citrus Nobilis Deliciosa, commonly called tangerines, grown in the State of Florida.

The term "standard packed box" means 1⅗ bushels whether in bulk or in a container.

Section 3. The Commissioner of Agriculture in his discretion and by and with the consent and advice of the Governor shall have the power to declare the existence of a State Emergency in the Citrus Industry, and upon petition or petitions signed by persons, firms, corporations, or associations, owning or controlling 50% or more of the producing acreage of citrus fruit, requesting such action, being filed with the Citrus Commission, such percentage to be based upon the survey heretofore made by the Federal Emergency Relief Administration and supplemented by such further surveys as the Citrus Commission from time to time may make, and after the Citrus Commission shall have procured from the producers, shippers, or handlers of citrus fruit, not subject to the provisions of this Act, binding agreements to conform thereto and abide by its terms, the Florida Citrus Commission shall determine and record in permanent form annually the average reasonable cost per standard packed box of producing citrus fruit and every contract, agreement, plan or arrangement with the grower by or under which his citrus fruit shall be bought, marketed, or processed shall be held to require that the person, firm,

corporation, or association buying, marketing or processing said citrus fruit shall in any event pay the grower said cost of production, to be ascertained by multiplying the said cost per standard packed box as shown by the record of the Commission current at the time the contract, agreement, plan or arrangement with the grower shall be made, by the number of packed boxes so bought, marketed and processed during the season or under the particular contract, agreement, plan or arrangement if for less than a marketing season. Any contract, plan, scheme or device whereby it shall be attempted to preclude the grower from recovering such cost of production shall to that extent be held to be unlawful and against the public policy of this State, but in all other respects and particulars contracts of sale, marketing and processing shall be valid and binding and the terms thereof shall measure the rights of the respective parties.

Section 4. The provisions of this Act shall apply to any one or more of the citrus varieties embraced hereunder as may be determined by the petitions and agreements provided for in the foregoing section.

Section 5. This Act shall become effective immediately upon becoming a law.

Approved June 8, 1935.
Filed in Office Secretary of State June 8, 1935.

## EXHIBIT "E".

### Bond and License Act.

Chapter No. 16860, Laws of Florida—Acts of 1935 as Amended by Chapter No. 17777, Acts of 1937

AN ACT Relating to the purchase, handling, sale and accounting of citrus fruit grown in the State of Florida; to prevent fraud and deception therein; to provide for the licensing and bonding of citrus fruit dealers; to prescribe certain powers and duties of the Commissioner of Agriculture of the State of Florida in the administration and enforcement of this act; and to prescribe penalties for the violations of the provisions of this Act.

Be it Enacted by the Legislature of the State of Florida:

Section 1. That as used in this Act:

(a) The term "person" means and includes individuals, firms, partnership, association, corporation, and any other business unit.

(b) The term "citrus fruit" means and includes only the fruit Citrus Grandis, Osbeck, commonly called grapefruit, and/or Citrus Sinensis, Osbeck, commonly called Oranges, and/or Citrus Nobilis Deliciosa, commonly called tangerines, grown in the State of Florida.

(c) The term producer means and includes any person engaged in the business of growing and/or producing citrus fruit.

(d) The term "consignor" means and includes any person other than a producer who ships or delivers to any commission merchant, or dealer any citrus fruit for handling, sale or resale.

(e) The term "commission merchant" means and includes any person engaged in the business of receiving any citrus fruit for sale, on commission or for or on behalf of another.

(f) The term "consignment shipper" means and includes any person who contracts with the producer of citrus fruit for the marketing thereof for the sole account and risk of such producer and who agrees to pay such a producer the net proceeds derived from such sale.

(g) The term "cash buyer" means and includes any person who purchases any citrus fruit in Florida from the producer thereof for the purpose of resale.

(h) The term "broker" means and includes any person engaged in the business of negotiating the sale or purchase of any citrus fruit.

(i) The term "agent" means and includes any person, who on behalf of any one citrus fruit dealer, negotiates the consignment or purchase of any citrus fruit.

(j) The term "dealer" means and includes every person other than a producer, consignor, commission merchant, consignment shipper, cash buyer, broker, or agent who in any manner makes or attempts to make money or any other thing of value on any citrus fruit by dealing in the same in any manner whatsoever.

(k) The term "citrus fruit dealer" means and includes every consignor, commission merchant, consignment shipper, cash buyer, broker, agent association, cooperative associatior, and dealer, as herein above defined.

(l) The term "Commissioner" means the Commissioner of Agriculture of the State of Florida.

(m) The term "standard packed box" means one and three-fifths (1⅗) bushels of citrus fruit whether in bulk or in container.

(n) *The term "shipping season" means and includes that period of time commencing July 1 of one year and ending June 30 of the following year.*

NOTE: The italicized portion did not appear in the 1935 Act.

Section 2. That no person shall act as a citrus fruit dealer without having obtained a license as provided in this Act. That any person desiring to engage in the business of citrus fruit dealer in the State of Florida shall make application to the Commissioner for a license. The Commissioner may by regulation prescribe the information to be contained in such application. Upon the filing of the application, and annually thereafter, the applicant shall pay to the Commissioner a fee of Ten Dollars except that where any applicant expects to deal only as an agent, as defined herein, such applicant shall pay the sum of Five Dollars. All such license fees collected hereunder shall be paid by the Commissioner into the State Treasury monthly to the Credit of the General Inspection Fund. Said fees shall be kept in said General Inspection Fund and are hereby appropriated and made available for defraying the expenses incurred in the administration and enforcement of this Act.

NOTE: The following paragraph appeared at the end of Section 2 in the 1935 Act.

"In cases where a sale of citrus fruit is made direct to a purchaser for cash paid at the time of sale, no license shall be required but any agent of the Commissioner shall, if the citrus fruit has been properly inspected, graded and labeled as required by law, issue a certificate to the purchaser reciting that the fruit has been inspected and all requirements of law complied with and that the fruit has been paid for and such certificate shall be accepted in lieu of a license by all agents and employees of the Commissioner. No fee shall be charged for such Certificate."

Section 3. *That before any license is granted by the Commissioner to any person other than an agent as defined in this Act, the applicant therefor must deliver to the Commissioner a good and sufficient cash bond or surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this State as surety, in the amount of Ten Dollars for each one thousand standard packed boxes of citrus fruit that the said applicant intends to deal with during the next twelve months, as set forth in his application up to and including one million standard packed boxes of citrus fruit; provided, however, that no bond shall be less than Five Hundred Dollars in amount nor greater than Ten Thousand Dollars in amount. Said bond shall be in the form approved by the Commissioner and shall be conditioned upon compliance with the provisions of this Act, and upon faithful compliance with the conditions of all contracts, verbal or written, made by the citrus fruit dealer with producers relative to the purchase, handling, sale and accounting of sales of citrus fruit and upon applicant accounting for the proceeds of any citrus fruit contracted for in accordance with the terms of the contracts with producers. Said bond shall be to the Commissioner and his successors in office, in favor of every producer with whom applicant deals in the purchase, handling, sale and accounting of sales of citrus fruit. The aggregate accumulated liability under any such bond shall not exceed the amount named*

*therein. Every such bond shall continue in force and effect until ninety days after the termination of the shipping season for which the bond is given. Any producer claiming to be injured or damaged by any act of said citrus fruit dealer, or the Commissioner on behalf of all producers contracting with the said citrus fruit dealer, may maintain an action on said bond against the citrus fruit dealer and the surety named in said bond, or either of them, and any judgment against the citrus fruit dealer, and/or surety in any such action shall include costs.*

*In cases where liability under and by virtue of any bond given pursuant to the provisions hereof is admitted, without suit, and the amount or amounts admitted to be due are paid to the Commissioner, the Commissioner is authorized and directed to ascertain the amount or amounts due the claimant or claimants who has or have duly filed a claim or claims under and in connection with such bond prior to the expiration of ninety days immediately following the end of the shipping season for which such bond was given, and thereafter the Commissioner shall make distribution of the amount or amounts so paid to him under such bond to the extent that the same may reach in satisfying such claim or claims; provided, however, that where there are two or more claimants who have duly filed claims within the time last aforesaid that aggregate an amount in excess of the amount or amounts held by the Commissioner for distribution, such claimants shall participate in the proceeds of such funds in the hands of the Commissioner only on a pro rata basis, and no one of such claimants shall receive any preference over the others by reason of having filed his claim prior to the filing of the claims of the others.*

NOTE: In the 1935 Act, Section 3 read as follows:

"Section 3. That before any license is granted by the Commissioner, the applicant therefor must deliver to the Commissioner a good and sufficient cash bond or surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this State as surety, in the amount of Ten Dollars for each one thousand standard packed boxes

of citrus fruit that the said applicant intends to deal with during the next twelve months, as set forth in his application, up to and including five hundred thousand standard packed boxes of citrus fruit; provided however, that no bond shall be less than One Hundred Dollars in amount nor greater than Five Thousand Dollars in amount. Said bond shall be in the form approved by the Commissioner and shall be conditioned upon compliance with the provisions of this Act and upon faithful compliance with the conditions of all contracts, verbal or written, made by the citrus fruit dealer with producers and/or any person contracting with the citrus fruit dealer relative to the purchase, handling, sale and accounting of sales of citrus fruit and upon applicant accounting for the proceeds of any citrus fruit contracted for in accordance with the terms of the contracts with producers. Said bond shall be to the Governor of the State of Florida and his successors in office, in favor of every person with whom applicant deals in the purchase, handling, sale and accounting of sales of citrus fruit. The aggregate accumulated liability under any such bond shall not exceed the amount named therein. Every such bond shall continue in force and effect until notice of the termination thereof is given by registered mail to the Commissioner, and every such bond shall set forth such fact. Any person or producer claiming to be injured or damaged by any act of said citrus fruit dealer, or the Commissioner on behalf of all producers and/or persons contracting with the said citrus fruit dealer may maintain an action on said bond against the citrus fruit dealer and the surety named in said bond, or either of them, and any judgment against the citrus fruit dealer and/or surety in any such action shall include costs. No bond shall be required of any purchaser who pays cash for the fruit which he buys at the time of the sale."

Section 4. That it shall be unlawful in, or in connection with, any transaction relative to the purchase, sale and accounting of sale and handling of citrus fruit:

1. For any citrus dealer to make or exact any fraudulent charge to and/or from any person.

2. For any citrus dealer to reject or fail to deliver in accordance with terms of the contract without reasonable cause any citrus fruit bought or sold or contracted to be bought or sold by such citrus fruit dealer.

3. For any citrus fruit dealer to discard, dump or destroy, without reasonable cause any citrus fruit received by such citrus fruit dealer.

4. For any citrus fruit dealer to make, for a fraudulent purpose any false or misleading statement concerning the condition, quality, quantity, or disposition of or the condition of the market for, any citrus fruit which is received by such citrus fruit dealer or bought or sold or contracted to be bought or sold by such citrus fruit dealer; or the purchase or sale of which is negotiated by such citrus fruit dealer; or to fail or refuse truly and correctly to account promptly in respect of any such transaction in any such citrus fruit to the person with whom such transaction is had.

5. *For any citrus fruit dealer to knowingly buy, sell, receive, process or handle stolen citrus fruit.*

NOTE: The italicized portion did not appear in the 1935 Act.

Section 5. Whenever an applicant has paid the prescribed fee, the Commissioner shall issue to such applicant a license which shall entitle the licensee to do business as a citrus fruit dealer unless and until it is suspended or revoked by the Commissioner in accordance with the provisions of this Act but said license shall automatically terminate unless the annual fee is paid within thirty days after notice has been mailed that payment is due.

Section 6. That if any citrus fruit dealer violates any provisions of this Act he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation. Such liability may be enforced either (1) by complaint to the Commissioner, as hereinafter provided, or (2) by suit in any Court of competent

jurisdiction; but this Section shall not in any way abridge or alter the remedies now existing at common law or by statute, and the provisions of this Act are in addition to such remedies.

Section 7. *That any person complaining of any violation of any of the provisions of this Act by any citrus fruit dealer during any shipping season may at any time prior to the expiration of ninety days immediately following the end of such shipping season* apply to the Commissioner by petition, which shall briefly state the facts, whereupon, if in the opinion of the Commissioner the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the Commissioner to the citrus fruit dealer, who shall be called upon to satisfy the complaint or to answer it in writing within a reasonable time to be prescribed by the Commissioner. After an opportunity for hearing on a complaint the Commissioner shall determine whether or not the citrus fruit dealer has violated any of the provisions of the Act. If after hearing on a complaint made by any person under this Section the Commissioner determines that the citrus dealer has violated any provision of this Act, he shall, unless the offender has already made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as a result of such violation and shall make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order. If any citrus fruit dealer does not comply with an order for the payment of money within the time limited in such order, the complainant or any person for whose benefit such order was made, may, *within ninety days* from the date of the order file in any Court of competent jurisdiction a petition or declaration setting forth briefly the cause for which he claims damages and the order of the Commissioner in the premises. Such suit in such Court shall proceed in all respects like other civil suits for damages, except that the findings and order of the Commissioner shall be *prima facie* evidence of the facts therein stated, and the petitioner or plaintiff shall not be liable for costs in such Court nor for costs in any subsequent stage of the proceedings unless they accrue upon his appeal. If the

etitioner or plaintiff finally prevails he shall be allowed reasonable attorney's fee to be taxed and collected as a art of the costs of the suit.

NOTE: This italicized portion read as follows in the 935 Act:

"That any person complaining of any violation of any provisions of this Act by any citrus fruit dealer may at any time within nine months after the cause of action accrues apply to the Commissioner by petition, which, etc."

* * * NOTE: This italicized portion reads as follows n the 1935 Act:

"* * * within one year * * * etc."

Section 8. That whenever the Commissioner determines hat any citrus fruit dealer violated any of the provisions f this Act or has violated any of the provisions of any ther law of the State of Florida governing and applicale to citrus fruit dealers as herein defined, he may publish he facts and circumstances of such violation and/or by rder, suspend the license of such offender for a specific eriod, or revoke the same or make such other appropriate rder as he may deem just and proper, and any such order hall specify the effective date thereof and any order other han one suspending or revoking a license shall autoatically suspend such license until said order is complied ith. That any action of the Commissioner with reference o the revocation or suspension of any license granted under the provisions of this Act, may be reviewed by any ourt of competent jurisdiction.

Section 9. That every citrus dealer shall make and keep correct record showing in detail the following with refernce to the purchase, handling, sale and accounting of sale f citrus fruit handled by him, namely:

(a) *The name and address of the producers or other persons from whom the citrus fruit was procured, and if same*

*was procured from some other than a licensed handler, the name and address of the producer of said fruit.*

NOTE: The italicized portion read as follows in the 1935 Act:

(a) The name and address of the producers.

(b) The date citrus fruit is received and the amount thereof, and the purchase price paid therefor if purchased for the purpose of resale.

(c) The condition of such citrus fruit upon receipt by the citrus fruit dealer.

(d) If the citrus fruit is handled on consignment for the account of the producer, the date of sale and the selling price.

(e) An itemized statement of the charges to be paid by the producer in connection with any sale.

(f) A detailed statement of all claims made by producers against the citrus fruit dealer, a copy of each when received to be certified to and filed with the Commissioner.

(g) A copy of the record and account of sales of citrus fruit handled on consignment and/or commission shall be delivered to the producer upon the consummation of the sale, together with all moneys received by the citrus fruit dealer in payment for such transactions made upon account of the producer, less the agreed commission and other charges which must be separately itemized, and payment and accounting must be made by said citrus fruit dealer to the producer within fifteen days after said citrus fruit dealer received the money in payment of said citrus fruit unless otherwise specified in contract between citrus fruit dealers and *producer.*

NOTE: The word "producer", italicized above, read "grower" in the 1935 Act.

Section 10. That in the investigation of complaints under this Act the Commissioner, or his duly authorized agents, shall have the right to inspect such accounts, records, and

memoranda of any citrus fruit dealer as may be required for the determination of any such complaint. If any such citrus fruit dealer refuses to permit such inspection, the Commissioner may publish the facts and circumstances and/or by order suspend the license of the offender until permission to make such inspection is given.

Section 11. That the Commissioner, or any officer or employee designated by him for such purpose, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records and memoranda as may be material for the determination of any complaint under this Act. In case of disobedience to a subpoena of the Commissioner, or any of his officers or employees, may invoke the aid of any Court of competent jurisdiction in requiring the attendance and testimony of witnesses and the production of accounts, records and memoranda and any such Court may in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring the person to appear before the Commissioner, or his agents or employees or to produce accounts, records, and memoranda as so ordered, or to give evidence touching any matter pertinent to any complaint and any failure to obey such order of the Court shall be punished by the Court as a contempt thereof.

Section 12. That the commissioner may make such rules, regulations and orders as may be necessary to carry out the provisions of this Act and may cooperate with any department or agency of the United States Government.

Section 13. That any person who acts as a citrus fruit dealer as defined in this Act without a license, or having a license, violates or aids in the violations of any provision of this Act, or any person who represents himself as a citrus fruit dealer but who is not a citrus fruit dealer as defined in this Act, shall for each and every offense be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding $1000.00 or by imprisonment in the county jail for more than six months or by both

such fine and imprisonment in the discretion of the Court. Civil suits and criminal prosecutions arising by virtue of any of the provisions of this Act may be instituted in the County where the said citrus fruit was received by the citrus fruit dealer, or in the County in which the principal place of business of such citrus fruit dealer is located within the State of Florida, or within the County in which the violation of this Act occurred, or if such violation occurs in more than one county, then within any county in which such violation of this Act occurred.

Section 14. *That the several Circuit Courts of the State of Florida, sitting in Chancery, are hereby vested with jurisdiction specifically to enforce and to enjoin and restrain any citrus fruit dealer from violating, the provisions of this Act, or of any rule, regulation or order made by the Commissioner pursuant to this Act in any proceeding brought by the Commissioner in any of said Circuit Courts; and in any such proceeding it shall not be necessary for the Commissioner to allege or prove that an adequate remedy at law does not exist.*

NOTE: The above Section did not appear in the 1935 Act.

Section 15. That it shall be the duty of each state and/or county law enforcement officer to make arrests for violation of this Act when notified of such violation by the Commissioner of Agriculture, or his authorized agent, inspector or representative.

Section 16. That this act shall be liberally construed and if any part or portion thereof be declared invalid, or the application thereof to any person, circumstance or thing is declared invalid, the validity of the remainder of this Act and/or the application thereof to any other person, circumstance or thing shall not be affected thereby and it is the intention of the Legislature to preserve any and all parts of said Act if possible.

Section 17. That all laws or parts of laws in conflict herewith and the same are hereby repealed.

Section 18. That this Act shall take effect immediately upon its passage and approval by the Governor, or upon becoming a law without such approval.

## EXHIBIT "F".

### Resolution & Order.

WHEREAS, Honorable Nathan Mayo, Commissioner of Agriculture of the State of Florida, by and with the consent and advice of Honorable Fred P. Cone, Governor of the State of Florida, has by proclamation dated the 13th day of January, A. D. 1939, declared the existence of a State emergency in the citrus industry, under authority of Chapter 16862, Laws of Florida, Acts of 1935, known as the Grower's Cost Guarantee Law; and

WHEREAS, petitions signed by persons, firms, corporations and associations, which this Commission finds own or control 50% or more of the producing acreage of citrus fruit and 50% or more of the producing acreage of grapefruit in the State of Florida, have been presented requesting the Florida Citrus Commission to determine and record in permanent form the average reasonable cost per standard packed box of producing grapefruit; and

WHEREAS, the Florida Citrus Commission has determined that all citrus fruit dealers handling grapefruit now being grown in the State of Florida are subject to the provisions of said act; and,

WHEREAS, the Florida Citrus Commission, based upon said proclamation of the Commissioner of Agriculture and the Governor of Florida, and upon said petitions, having proceeded as authorized and required by said Chapter 16862, Laws of Florida, Acts of 1935, hereby determines and records in permanent form the average reasonable cost per standard packed box of producing grapefruit to be thirty-two (32¢) cents for the citrus fruit season 1938-39;

NOW, THEREFORE, the Florida Citrus Commission does hereby find, determine and order that the average reasonable cost per standard packed box of producing grapefruit is thirty-two (32¢) cents and that said price be recorded in permanent form for the season 1938-39 and that every contract, agreement, plan or arrangement with the grower by or under which his grapefruit shall be bought, marketed or processed shall be held to require that the person, firm, corporation or association buying, marketing or processing

said grapefruit shall in any event pay the grower said cost of production as herein ordered and as provided in Chapter 16862, Laws of Florida, Acts of 1935.

The foregoing resolution and order are unanimously adopted and promulgated by the Florida Citrus Commission in open meeting duly assembled in Lakeland, Florida, on this the 16th day of January, A. D., 1939, and shall become effective at 12:01 a. m. Friday, January 20th, A. D. 1939.

FLORIDA CITRUS COMMISSION,
By JOHN MAXCY, *Chairman.*

Attest: Chas. F. Chastain, *Secretary.* (Seal.)

## EXHIBIT "G".

[Title omitted]

Comes now the above named plaintiffs, and with leave of Court amends their complaint heretofore filed in this cause by adding thereto a paragraph to be known as Paragraph XXIIIA to read as follows:

"XXIII-A. Plaintiffs further allege by reason of the facts and circumstances herein alleged the Statute under attack and the Resolution and Order of the Florida Citrus Commission issued thereunder, violates the Constitution of the United States in that they impair the obligations of the contracts of these plaintiffs and deny, impair and restrict the right of the plaintiffs to freedom of contract as guaranteed by the Constitution of the United States; they abridge the rights of personal liberty of these plaintiffs, and arbitrarily interfere with the private business of these plaintiffs and prohibit the lawful occupations of these plaintiffs, and impose unreasonable and unnecessary restrictions thereon, to the extent that they violate the Constitution of the United States; the said Statute and Resolution violating the Fourteenth Amendment of the Constitution of the United States, as well as Article 1, Section 10 thereof.

JOHN B. SUTTON,
G. L. REEVES,
*Attys. for Plaintiffs.*

STATE OF FLORIDA,
*County of Orange, ss:*

Before me, the undersigned authority, personally appeared C. E. Lindsey, who being by me first duly sworn, deposes and says that he is President of the Lakeland Highlands Canning Company, one of the plaintiffs in the above cause; that he has read the above and foregoing amendment, and that the same is true and correct.

C. E. LINDSEY.

Sworn to and subscribed before me this 10th day of April, A. D. 1939.

JULIAN A. BLADE,
*Deputy Clerk.*

Presented July 3rd, 1939.

ALEXANDER AKERMAN,
*Judge.*

(2965)